Volume 7, No. 25, Pages 7819 to 8527,
November 30 - December 11, 1992

FCC Record

A comprehensive compilation of decisions, reports, public notices and other documents of the Federal Communications Commission of the United States.

FEDERAL COMMUNICATIONS COMMISSION

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Citation Form: 7 FCC Rcd 1 (1992)

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-420

In the Matter of

BLACK TELEVISION WORKSHOP OF LOS ANGELES, INC. — File No. BPET-811118KF

Permittee of Noncommercial Educational Television Station KEEF-TV, Los Angeles, California

Order to Show Cause Why the Permit of KEEF-TV Should Not Be Revoked and Notice of Apparent Liability for a Forfeiture

In re Application of

BLACK TELEVISION WORKSHOP OF LOS ANGELES, INC. — File No. BLET-870225KE

Permittee of KEEF-TV Los Angeles, California

For License to Cover Construction Permit

In re Application of

BLACK TELEVISION WORKSHOP OF LOS ANGELES, INC. — File No. BMPCT-870610KU

Permittee of KEEP-TV, Los Angeles, California

For Consent to Modify Construction Permit

In re Application of

BLACK TELEVISION WORKSHOP OF LOS ANGELES, INC. — File No. BLET-870610KT

Permittee of KEEF-TV, Los Angeles, California

For License to Cover Construction Permit

In re Application of

BLACK TELEVISION WORKSHOP OF LOS ANGELES, INC.

Permit of KEEF-TV Los Angeles, California

For Special Temporary Authority

Appearances

Steven T. Yelverton, on behalf of Booker T. Wade, Rosa Ware, Gwendolyn May and Hope Smith Bynum;[1] *Harry F. Cole*, on behalf of Mary V. Woodfork; and *Gary P. Schonman;* on behalf of the Chief, Mass Media Bureau.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOSEPH CHACHKIN

Issued: November 19, 1992; Released: December 1, 1992

PRELIMINARY STATEMENT

1. On April 15, 1983 Black Television Workshop of Los Angeles, Inc. (BTW) received a permit to construct a noncommercial UHF television station on reserved Channel 68 to serve the Los Angeles area with the call letters KEEF-TV. After receiving four extensions of time to complete construction, BTW obtained program test authority in 1987 and commenced operation. However, soon thereafter, the Commission ordered KEEF-TV off the air because the station was operating at variance from the facilities authorized in its construction permit. The station has remained dark ever since.

2. In June 1987, BTW filed an application for modification of its construction permit and for a license to cover the proposed modified permit. However, in response to a series of pleadings prompted by an informal objection to the application by Mary Woodfork and two other original BTW directors, the Commission instituted this proceeding to determine whether the permit should be revoked. *Order to Show Cause, Hearing Designation Order and Notice of Apparent Liability*, 3 FCC Rcd 5443 (1988) (HDO).

[1] Yelverton purports to represent Black Television Workshop of Los Angeles, Inc., as well as Booker T. Wade, Rosa Ware, Gwendolyn May and Hope Smith Bynum, individual parties claiming to now control BTW. For reasons discussed more fully in the Presiding Judge's *Memorandum Opinion and Order*, FCC 92M-805, released July 22, 1992, note 1, Yelverton does not represent the corporate entity and this initial decision will be treated as filed solely on behalf of the named individuals.

3. The issues specified for hearing in the HDO are as follows:

(a) to determine whether control of the permittee corporation (BTW) was transferred without Commission approval, or exercised by persons not authorized to do so, in violation of Section 310(d) of the Communications Act; and, if so, whether such unauthorized control was due to the feasance, malfeasance, misfeasance, or nonfeasance (including but not limited to those actions mentioned in items (b) and (c), below) of the original eight directors [[2]], or any of them, constituting BTW's board in 1983; the group of four directors[[3]], or any of them, claiming to control BTW now; or any other persons or groups presently or formerly associated with BTW.

(b) To determine whether any of the aforementioned persons made misrepresentations to the Commission, were lacking in candor in their dealings with the Commission, or attempted to mislead or deceive the Commission as to the true ownership and control of the permittee in BTW's original permit application and related documents, in the subsequent above-captioned applications, in Ownership Reports filed with the Commission, and in pleadings filed with the Commission with respect to the past and current control of BTW.

(c) To determine whether any of the aforementioned persons violated Section 73.3613 (b) of the Commission's rules by failing to file the organizational documents required thereunder, including articles of incorporation and by laws and any amendments thereto, and by failing to report any agreements or understandings affecting ownership and control of the permittee.

(d) To determine, in light of the evidence adduced under the foregoing issues, whether any of the persons or groups named above possesses the requisite qualifications to be or remain a permittee of the captioned television station.

(e) If, in light of the evidence adduced pursuant to the foregoing issues, it is determined that revocation of the permit for station KEEF-TV, Los Angeles, CA, is not warranted, to determine, pursuant to Section 309(e) of the Communications Act, whether grant of the captioned applications, or any of them, will serve the public interest, convenience, and necessity.

The burden of proceeding with the introduction of evidence and the burden of proof as to Issues (a) through (d), inclusive, were placed on the Mass Media Bureau. The burden of proceeding with the introduction of evidence and the burden of proof as to Issue (e) was placed on Black Television Workshop of Los Angeles, Inc. (BTW).

4. Prehearing conferences were held on November 17, 1988, December 20, 1988, November 25, 1991, February 21, 1992, and March 4, 1992, all in Washington, D.C. An evidentiary admission session was held on March 17, 1989, also in Washington, D.C. Hearing sessions were held on April 27-30, 1992, in Los Angeles, California,[4] and on May 11, 1992 and May 15, 1992, in Washington, D.C. The record was closed on May 15, 1992. Tr. 1853, 1855. Proposed findings of fact and conclusions of law were filed on June 26, 1992, and replies were filed on July 10, 1992.

5. To meet its burdens under issues (a) through (d), the Bureau moved into evidence more than 35 documentary exhibits, most of which were provided by Wade in his pre-designation "Opposition to Informal Objection," filed on November 23, 1987. The Bureau also directly examined a total of seven witnesses. They consisted of six out of the eight original BTW directors to whom the construction permit was granted: Mary Woodfork, Rosa Ware, Linda Pate, Roy Campanella II, Jerrome Duncan, and Clint Wilson II. The Bureau also called as a witness, Michelle Moore, with whom Wade had had a personal relationship.[5] Wade, a party to this proceeding, was duly noticed by the Mass Media Bureau to testify. However, Wade did not appear. No rebuttal case was proffered in response to the Bureau's direct presentation. In addition, BTW offered no direct case exhibits or testimony with respect to issue (e).

Findings of Fact

6. Booker T. Wade, Jr. (Wade) holds an undergraduate degree from the University of California at Los Angeles and a law degree from Stanford University. Wade served as a staff attorney at the Federal Communications Commission in the late 1970s. During part of his employment at the FCC, Wade served as a legal assistant to then Commissioner Tyrone Brown. Tr. 1243.

7. Wade left the FCC in approximately 1980, and, with two colleagues, Jim Winston and Sam Cooper, established a company called Community Television Network (CTN). Through CTN, Wade was involved in filing applications with the FCC for construction permits for low power television stations. Wade and his colleagues filed applications on behalf of other persons. They were also principals in some of the low-power applications that were filed. Bureau Ex. 1, p. 16; Tr. 1246, 1248.

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[2] In a footnote to the HDO, the term "original eight directors" was defined to include Mary Woodfork, Clint Wilson, Gary Cordell, Roy Campanella, Jr., Linda Pate, Titilola Payne Parker, Jerrome Duncan, and Rosa Ware.

[3] In a footnote to the HDO, the Commission defined this group to include Booker T. Wade, Jr., Rosa Ware, Gwendolyn May, and Hope S. Smith.

[4] The hearing was initially scheduled to commence in Los Angeles on March 27, 1989. However, commencement of the hearing was delayed pending consideration of a stay request, motion to disqualify the Presiding Judge, and the filing of a distress sale application. These matters are fully discussed in the Commission's *Order*, 7 FCC Rcd 2716 (1992) directing the proceeding to be expedited to the greatest extent possible consistent with due process and that any exceptions to the initial decision are to be submitted to the Commission.

[5] The Bureau did not seek the testimony of Titilola Payne Parker because of her express lack of recall about relevant matters. See Bureau's Reply filed July 10, 1992, paragraph 4. As noted by the Bureau, Wade's counsel intended to call Payne as a rebuttal witness but decided not to do so. Gary Cordell had been scheduled to testify in Los Angeles, but his appearance was cancelled because of the outbreak of riots there. In lieu of subpoenaing Cordell to testify in Washington, the Bureau sought to introduce a declaration previously signed by him. (MMB Ex. 40). The exhibit was not received into the record. (Tr. 1597).

8. Wade's short-term goal was to file as many low-power television applications as he could. His ultimate goal was to build a for-profit nationwide network of commercial low power stations that would be controlled by Wade and his colleagues. Tr. 524, 1243-1246, 1250, 1400-1401, 1617. Wade anticipated that if construction permits were granted, he would serve as an advisor in terms of getting the stations constructed, obtaining financing, and providing programming. Tr. 1248.

BTW's Formation And Initial Applications

9. Initially, Wade put together an application in the name of BTW for Channel 68 in Los Angeles as an LPTV station. Tr. 1263. There is little evidence in the record concerning that application, although it appears that Gary Cordell (Cordell), one of the eight directors originally listed in BTW's November 18, 1981 application for a full-power station, was among the principals in the BTW LPTV application. Bureau Ex. 1, p. 16.

10. After a mutually exclusive application for a noncommercial full-power television station was filed for Channel 68, Wade decided that he, too, would file a full-power application. Thus, on November 18, 1981, Wade, acting as legal counsel on behalf of BTW, filed an application for a construction permit for a new full-power noncommercial educational television station on Channel 68 in Los Angeles. Bureau Ex. 1; Tr. 1263-1264.

11. BTW was incorporated as a nonprofit "mutual benefit" corporation under the laws of the State of California on February 17, 1981. (Bureau Ex. 2). Although the application, as originally filed, referenced BTW's Articles of Incorporation (Bureau Ex. 1, p. 10), the Articles of Incorporation were not filed with the Commission until January 8, 1982, when Wade tendered an amendment to BTW's application. Bureau Ex. 4, p. 5. There was, however, no reference in the application, as originally filed, to any by laws for BTW, and BTW never amended its application to submit any by-laws.

12. The full-power application for Channel 68 identified BTW's board as consisting of seven directors: Gary Cordell (Cordell), Rosa Ware (Ware), Jerrome Duncan (Duncan), Roy Campanella II (Campanella), Mary Woodfork (Woodfork), Titilola Payne Parker (Payne) and Linda Pate (Pate). The application reflects that all the named directors were appointed by Wade, denoted as the "Organizer." Bureau Ex. 1, p. 5. In an amendment filed on January 8, 1982, Wade notified the Commission that an eighth director, Clint Wilson II (Wilson) had been added to BTW's board. Bureau Ex. 4, p. 3.

13. With two exceptions (as to whom the record is silent), the evidence reflects that all of these persons were either friends or acquaintances of friends of Wade's.[6] Woodfork first met Wade while the two were at Stanford in the mid-1970's. Tr. 519. They shared a mutual friend. Tr. 519. When he began his LPTV business, Wade solicited Woodfork to participate in at least one application for the Hartford, Connecticut market. Tr. 530-531. Ware, a telephone operator, is Wade's sister. Tr. 943, 982. Duncan, an attorney in Los Angeles, had first encountered Wade through a mutual acquaintance, who happened to be one of Wade's business partners in his LPTV venture. Tr. 1530-1531. Duncan introduced Wade to Pate, an attorney in Los Angeles who shared office space with Duncan. Tr. 1129-1130. Campanella was a television producer then working with one of Wade's colleagues and business partners. Tr. 1392. Wilson was a professor at School of Journalism at the University of Southern California when he was contacted by Wade about BTW. Tr. 1615. He had known Wade some 20 years earlier when Wilson was a professor and Wade was a student at Los Angeles City College. Tr. 1614-1615. The record does not reflect Wade's relationship with Payne or Cordell prior to the formation of BTW. With the exception of Duncan and Pate, who shared office space, it appears that none of the Original Eight Directors knew each other personally.

14. Wade told the directors that BTW's ultimate objective was to construct and place on the air a new noncommercial educational television station which would be minority owned and operated. It was anticipated that the station would serve the interests of the various minority communities in the Los Angeles area, primarily the African-American community. (Tr. 520, 947, 1132, 1394).

15. The possibility of a minority owned noncommercial television station in Los Angeles was the motivating factor in the directors' decision to participate in BTW. In Woodfork's words, she was "very excited about the possibilities" of such a station. Tr. 522. Pate stated that she understood that BTW was proposing "the only black non-profit venture other than a television channel at Howard University. And I was very proud to be part of the fact that there would be a black, non-profit, public television channel in California." Tr. 1135. Campanella observed that the proposed station could serve as a "nice communications bridge" which "possibly could offer the community a way of feeling empowered and able to express itself." Tr. 1425. Duncan understood BTW to be "an opportunity to do some public service here in Los Angeles." Tr. 1531. Wilson recalled BTW's plan to "primarily serve the black community of Los Angeles" with programming "educational in nature, some that would be informative, particularly of interest or service to the low income parts of the community." Tr. 1676.

16. At the time she accepted a position on BTW's board, Woodfork did not know who the other directors were or would be. Tr. 523. Nor did Wade describe to her what her duties would be as a director. Tr. 525. Woodfork did not see a copy of BTW's application until years after the construction permit was granted. Tr. 528, 935, and she does not recall having specifically authorized the filing of the application, despite a representation in the application to that effect. Bureau Ex. 1, p. 14; Tr. 529, 936. Woodfork was not even told by Wade that there was a competing application for Channel 68. Tr. 525. Furthermore, Wade did not discuss with Woodfork how long her term as a

[6] Woodfork graduated from Stanford University in 1974 with a B.S. in Biological Science and attended UCLA Medical School from 1974-1977. In 1976, she worked as Special Assistant to the Lieutenant Governor of California and in this capacity, she provided research on health program issues and helped draft position papers. Also, she taught undergraduate level courses in pre-medicine and preventive medicine techniques and worked as a Project Coordinator at the University of Southern California specializing in geriatric care. Bureau Ex. 19, p. 7. She is currently self employed in medical management and consulting and medical legal editing. Tr. 518.

director would be, and Woodfork, having had no prior corporate experience, assumed she would function as a director in perpetuity. Tr. 543, 734-735, 804-805.

17. Ware signed the application on behalf of BTW. However, she did not personally prepare the application, she did not furnish any information that went into the application; and she did not even verify any of the representations in the application even though the application identifies her as the individual under whose direction all non-engineering exhibits were prepared. At the time the application was filed, Ware had not met with any of the other directors, and she could not recall whether she had even spoken to any of them prior to signing the application. She thinks Wade put the application together. Bureau Ex. 1, p. 4; Tr. 954-965. Ware claims to have been told by Wade that she had a term of office. She thinks he told her that her term as a director would run two or three years. Tr. 952.

18. Campanella had reservations right from the start about accepting a position on BTW's board because none of the other directors had experience in broadcasting; there was no broad based representation of minorities on the board, such as Hispanics and Asians; and there was no mention about entities such as the NAACP. Nevertheless, Campanella agreed to serve on the board of directors, provided that within several months BTW would add to its board representatives from key community organizations. Tr. 1394-1399. Like Woodfork, Campanella did not specifically authorize Ware to file the application, despite a representation in the application to the contrary. Bureau Ex. 1, p. 14; Tr. 1408. Wade did not discuss with Campanella how long he would serve as a director. Tr. 1405.

19. Pate does not recall seeing the application before it was filed. Nor did she authorize anyone to file the application. Bureau Ex. 1, p. 14; Tr. 1137. At the time she accepted her appointment to BTW's board, Pate had no understanding as to what her duties would be or the duration of her term, if any, as a director. Tr. 1137, 1139.

20. Duncan did not believe that he had any specific term of office as a director. Tr. 1539. Wilson, on the other hand, thinks Wade may have told him his term would last three or five years. Tr. 1623.

21. Wade filed an amendment to BTW's application on January 8, 1982. Bureau Ex. 4. The amendment was not signed by a principal of BTW. In addition to submitting BTW's Articles of Incorporation and notifying the FCC that Wilson had been added to BTW's board as the eighth director, the amendment represented that Cordell was BTW's President and would serve as General Manager when the station went on the air. The amendment also represented that Ware was BTW's Vice President and would serve as Director of Public Affairs when the station commenced operations. Bureau Ex. 4, p. 2.

22. Neither Woodfork, Campanella, Pate, nor Duncan ever voted for Cordell or Ware to become officers of BTW. Tr. 547-548, 1421-1423, 1144-1145, 1546-1549. Even Ware does not recall ever being elected BTW's Vice President or agreeing to be the station's Director of Public Affairs. Tr. 984-985. Ware could not recall Cordell ever being President. Tr. 986.

23. Although the initial slate of directors was apparently already in place at the time Wilson joined the board, the board did not elect Wilson to be a director. Tr. 543-545, 1142, 1143, 1442, 1548, 1627. Rather, Wade simply named Wilson to the board. Tr. 1614-1616. Wade also unilaterally designated Wilson to be BTW's Chairman. Tr. 1622-1623.

24. Wade designated Wilson as Chairman because of his extensive background in communications (Tr. 1616, 1618, 1627)[7] in order to counter BTW's opponent in the comparative hearing who had a communications professor from UCLA as its main participant. Tr. 1682-1683. In this regard, Wilson was the only BTW principal who testified at the comparative hearing for the Channel 68 construction permit. Tr. 1624. At the time of his designation, Wilson requested and Wade gave him the names of the other directors. Wilson wanted to contact the directors to determine whether they wanted him to serve in that capacity and their interests coincided. Wade assured him it was unnecessary and there would be no problem since one of the directors was his sister and another director, Woodfork, was a close friend. Tr. 1618, 1681-1682. Further, Wade made clear that he was the organizer of BTW and his recommendation was tantamount to approval. Tr. 1681-1682. Wilson made no effort to contact the other directors and did not meet the other board members until April 1983, the meeting held after grant of the construction permit. Tr. 1683.

25. Wade also filed an amendment to BTW's application on September 27, 1982. Bureau Ex., 8. Among other things, the amendment reported a new mailing address for BTW, provided a new staffing proposal, and submitted a copy of an executed Internal Revenue Service "Application for Recognition of Exemption." The IRS application was dated September 24, 1982, and was signed by Ware. Bureau Ex. 8; Tr. 1003.

26. Neither Woodfork, Campanella, nor Pate was aware that an amendment had been filed on September 27, 1982, on behalf of BTW. Neither Woodfork nor Pate was ever asked to authorize the filing of the IRS application for a tax exemption (Tr. 555-556, 1148, 1429), and Campanella had no knowledge of or input into BTW's revised staffing proposal, even though he had received assurance from Wade that he would be called upon to provide his expertise in this area. Tr. 1429. Although Ware signed both the amendment and the IRS application, she did not verify any of the information in those documents, nor did she understand what it meant to amend an FCC application. Tr. 1003-1004.

27. Wade's role ostensibly was to be limited to that of counsel to the corporation. There were signs, early on, however, that Wade envisioned a more significant role for himself and a different broadcast operation than contemplated by the directors. Wade told Campanella, for instance, that BTW's noncommercial station would work in tandem with Wade's commercial low power network by serving as a basis for a production company that Wade planned to organize. Tr. 1404. Indeed, within the first six months of becoming a board member, Campanella came to perceive Wade's intentions in the following manner:

[7] Wilson was then Associate Professor at the USC School of Journalism and Director of the Media Institute for Minorities, funded by the Times-Mirror Company. Wilson is currently Associate Dean of the School of Communications and Interim Chairman of the Department of Journalism at Howard University. Tr. 1614, 1622.

> It seemed to me that, if you were to put together an organizational chart from the point of view of Booker Wade, that he would be at the top of the pyramid, and off to the right somewhere there would be a line that goes to the board of directors. Down the middle there would be a line that went to the production company that [Wade] was running. Off to the left there would be another line linking him with this low-power television network, and another line would be a box which would probably have a question mark in it, any other idea [Wade] might have that's good and can be plugged in. Tr. 1504-1505.

BTW's Post-Grant Activities

28. BTW's application was granted in April, 1983. Bureau Ex. 9. Shortly thereafter, a meeting of the Original Eight Directors was convened. Tr. 734-738. That meeting was attended by all of the Original Eight Directors and Wade. Tr. 733-739, 1446. It was largely a self-congratulatory and introductory meeting. *E.g.*, Tr. 987, 1445-1446, 1532-1533, 1629-1630. The directors did discuss the importance of fund-raising, although no official actions were taken. Tr. 539-542. Wade and Wilson ran the meeting. *Id.* No official documents, such as articles of incorporation or by-laws, were distributed. *Id.* No election of any officers was conducted, although Wade announced that Ware would serve as Secretary and Treasurer and that, in that role, she would have control of the books and the corporation's money. Tr. 548, 645.

29. Campanella was unaware that Ware was ever anything other than a director. Tr. 1441-1442. Wilson never voted for Ware to be Treasurer; he believed that Ware was Treasurer when he became a director. Tr. 1662. Duncan acknowledged that at some point Ware assumed responsibility for taking care of BTW's checkbook, but he never voted for her to be Treasurer and did not know that she held that particular title. Tr. 1565-1566. Ware thinks that Wade offered her the position of Treasurer during a telephone conversation, but she could not recall when the conversation took place. Tr. 977-978, 1050-1051.

30. Following the grant, various BTW directors undertook projects designed to enable the corporation to construct and operate its station. Wade was at that time generally recognized by the directors as being BTW's general counsel or legal counsel. Tr. 556, 1408, 1620.[8] Since none of the directors had any experience or expertise with respect to the Commission's rules and regulations, they looked to Wade for guidance and advice in that area. Tr. 1498, 1621, 1644, 1740. In other areas, however, various directors felt capable of advancing corporate interests. In each instance, however, their individual efforts were frustrated by the actions of Wade.

31. For example, Duncan, Wilson and Campanella all recognized that, for the board to be able to operate at all, it had to have a set of by-laws establishing both the parameters of the board's authority and the mechanics for exercising that authority. Tr. 1433, 1533, 1635. Since Duncan was a California attorney with experience in forming nonprofit corporations, he volunteered to draft a set of by-laws. Tr. 1533. He did in fact draft such by-laws (approximately five-six pages in length), which he provided to Wade for his review and comment. Tr. 1534-1535. However, Wade never provided any comment, and Duncan's draft by-laws were ignored. Tr. 1535.

32. Similarly, Duncan sought to cultivate potential fundraising sources through his contacts in Los Angeles. Tr. 1558. Again, however, his efforts were frustrated and/or discouraged by Wade, who declined to provide Duncan with information or assistance which Duncan believed to be necessary to his efforts. Tr. 1541. As a result, those efforts were non-productive. Tr. 1560-1561.

33. Campanella encountered similar problems. Recognizing the relative inexperience of the board members relative to broadcast matters, he proposed that Wade provide the board with a workshop or seminar covering all the key decision-making points necessary in constructing a noncommercial television station. According to Campanella, Wade's response was "like, hey, why are you even bringing that up. Don't rock this boat." Tr. 1496. While Campanella urged that BTW seek funds from nationally-recognized organizations (such as the Ford Foundation or the Rockefeller Foundation), he found Wade determined to pursue negotiations with a Korean-owned company which was interested in purchasing blocks of program time, an arrangement about which Campanella had serious misgivings. Tr. 1444-1445, 1491-1492.

34. Early on as Chairman of BTW, Wilson had deferred to Wade because Wade was the organizer and a former FCC attorney. Wilson had no reasons to question Wade's motives. However, Wilson would later tell Woodfork that the more he attempted to exercise his independent authority as Chairman, the more difficulty he encountered with Wade. Tr. 756. In fact, Wilson came to believe that Wade was attempting to sabotage his efforts to advance the project.[9] Wilson based this belief, in part, on Wade's continued failure to produce by-laws, Wade's frequent rejection of his ideas, and Wade's role in orchestrating Wilson's removal from the board. Tr. 1655, 1740-1741.

35. Wilson cited a number of instances where Wade frustrated his efforts. He contacted an individual willing to lease BTW space for its transmitter on Mt. Wilson; Wade discouraged any follow-up with respect to that opportunity. Tr. 1632-1633. In connection with a search for potential studio sites, Wilson (together with Campanella) had identified an opportunity to locate BTW's studios at the Ebony Showcase Theater. That site, at the crest of a hill, was understood by Wilson to be superior because of engineering reasons. Tr. 1652. However, Wilson was discouraged by Wade from pursuing that site and Wilson's efforts with respect to that site were ultimately cited in a document prepared by Wade as a basis for dissatisfaction with his performance on behalf of BTW. *Id.*, Tr. 1632-1633, 1796-1797.

36. In another situation, Wilson spent his own money to fly himself, an attorney and an engineer to Las Vegas, where the National Association of Broadcasters was having its annual convention, apparently in 1984. Tr. 1649. The purpose of the trip was to meet with potential sources of financing who might assist BTW in its construction and

[8] There is no evidence that any formal board action was taken to retain Wade as counsel for BTW. According to Woodfork, BTW never asked Wade to be its lawyer, "he came to us." Tr. 689.

[9] Wilson testified that "...from the time the permit was awarded...until about a year after that, all of the efforts that I was trying to put forward...seemed to be frustrated by Mr. Wade." Tr. 1632.

operation. Tr. 1649. Additionally, the engineer was brought along to review available equipment packages on display at the convention. Tr. 1650. Wilson advised Wade that he was making this trip, and Wade advised Wilson to take the trip. Tr. 1739.[10] However, in May, 1984, the making of the Las Vegas trip was cited as a reason for removing Wilson from his position as "chairman". Bureau Ex. 13; Tr. 1647.

37. The most consistent complaint about Wade voiced by BTW's directors in connection with the 1983-1984 period was his failure to provide them with any by-laws so that they could organize themselves properly. As noted above, Duncan perceived the need for by-laws very early on, and was frustrated at Wade's failure to provide any, or to cooperate in the creation of by-laws by Duncan. Tr. 1533-1534. The same frustration was expressed by Campanella, *e.g.*, Tr. 1419, and Wilson, *e.g.*, Tr. 1633-1634. In fact, Wilson's frustration became so great after several months that he sought independent counsel to assist in locating BTW's supposed by-laws so that the board could begin to function properly. Tr. 1633-1634. That independent counsel was Gregory Young (Young), Wilson's personal attorney. Tr. 1634.[11]

38. By the end of 1983, there had been and continued to be significant pressure on Wade to produce by-laws for the corporation. He failed to do so, despite the fact that he repeatedly told individual members of the board that he, Wade, had given copies of the by-laws to other members of the board.[12] For example, Wade told Campanella and Woodfork that Wilson had been given a copy of the by-laws. Tr. 551, 1419. Wilson denies ever having been given or even having seen any by-laws. Tr. 1634. To the contrary, Wilson testified that Wade had told him that the by-laws were included in certain files which Wade had placed in storage. Tr. 1633-1634.

39. At the end of 1983 or early 1984, with Wilson pressing for a copy of the by-laws, Wade advised Wilson that, according to the by-laws which Wade supposedly possessed, the terms of Duncan, Page and Campanella had expired; accordingly, Wilson was told by Wade to notify those three individuals that they were no longer on the board. Tr. 1635-1636. With Wade's concurrence, and solely on the basis of Wade's oral representations concerning the supposed content of the supposed by-laws, Wilson wrote to each of the three and advised them they were no longer on BTW's board. Tr. 1635-1636.

40. Pate was shocked to learn that her term as a director had expired because she did not know there were any by-laws or terms of office. Tr. 1146. Nevertheless, because of personal obligations and her perception that BTW was a disorganized group, she made no effort to retain her seat on BTW's board. Tr. 1148. Duncan does not recall ever being informed by Wilson that his term had expired. Tr. 1540-1541. However, he does recall a time when he no longer received notices of board meetings, after which Duncan ceased to participate actively in the corporation. Tr. 1547, 1564. Campanella had mixed emotions about attempting to rejoin the board. He wanted to be part of the project, given the socially important role that he thought the station could play, but he felt the board was a mere fiction. Ultimately, Campanella decided to seek "reelection" to the board. Tr. 1540-1543.

41. A meeting of BTW's board was held on March 10, 1984. Wilson prepared the notice for the meeting which contained the agenda items. The items listed included the election to fill vacancies on the Board of Directors, discussion of a possible studio and apprising the board of negotiations with Asian Tigers Enterprises, Inc. Bureau Ex. 32. In this connection, Wilson stated that Wade had indicated to him that one way to obtain start-up funds was to enter into agreements with ethnic minority entities for the purchase of program time. Tr. 1689. Wilson advised Wade in advance of the meeting that he intended to nominate Young to a seat on the board. Wilson told Wade that it was not his desire to replace Wade as counsel; he simply wanted a local attorney who could assist BTW in its business affairs. Tr. 1671-1672. Wilson also apprised Wade of the fact that Campanella wanted to continue as a member of the board. He also told Wade that this was an opportunity for him to serve as director. Tr. 1694.

42. Wilson testified that Wade concurred in the calling of, and planned to attend, the March meeting. Tr. 1636-1637. Also, Wade agreed, reluctantly, to stand for election as a director. Tr. 1694. However, other testimony indicates that Wade was in fact extremely upset about the plans to hold that meeting. Woodfork testified that Wade called her numerous times immediately prior to that meeting, suggesting that "it was illegal for us to be meeting at Greg Young's office." Tr. 669, 563. Wade initially instructed Woodfork not to attend the meeting; later, he told her to attend so that she could tell him what transpired at the meeting. Tr. 564-566. He also told her not to vote on anything, but that any actions taken at the meeting would in any event be nullified. Tr. 564-566. According to Woodfork, Wade was "very, very, very nervous" the morning of the meeting. Tr. 668.

43. Woodfork, Ware, Wilson, Campanella, and Young attended the March 10, 1984, meeting. Tr. 562. Contrary to his earlier statements to Wilson, Wade did not attend. Tr.

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[10] In agreeing that Wilson should go to the convention, Wade indicated to Wilson that Wade himself could not attend the convention that year; however, when he arrived in Las Vegas, Wilson found Wade there -- although Wade offered no explanation as to why he had told Wilson that he would not be there. Tr. 1740.

[11] Wilson testified that he did not believe it appropriate to ask Young to draft an entire new set of by-laws because Wade had repeatedly and expressly told Wilson that by-laws were already in existence. Tr. 1640-1641.

[12] Only one witness claimed ever to have seen any by-laws prior to January, 1987. Ware, Wade's sister, stated that Wade distributed by-laws to the board at a meeting in 1983. Tr. 989-990, and that she may have had a copy as early as 1981, when she signed the application. Tr. 994. Ware's testimony cannot be credited for several reasons. First, Ware's recollection was notably vague, and those details which she did claim to recall were inconsistent with the available documentary evidence. (*I.e.*, she recalled the by-laws as being only "two or three pages", possibly with a fourth page. Tr. 990-991; but the document claimed by Wade to be the by-laws, Bureau Ex. 5, is 16 pages long.) Second, her testimony concerning supposed distribution of supposed by-laws was expressedly, and flatly, contradicted by the other Original Eight Directors who testified. Tr. 548, 978, 986, 1633. Third, her demeanor on the witness stand undermined her credibility -- claiming little or no recollection of obviously important matters, appearing confused, Ware cannot be deemed to have been a reliable witness. In any event, her incredible, meager claim that she (and other board members) may have ever been given by-laws cannot be accepted in the face of overwhelming, consistent, credible evidence to the contrary.

1637. That meeting appears to have represented the culmination of a long dispute between Woodfork and Wilson. Woodfork did not know that Wade had personally named Wilson to be BTW's Chairman. In fact, Wade had emphatically denied to Woodfork that he had done so. Tr. 780. In her conversations with Wade, Wade repeatedly told her that Wilson did not have the right to hold himself out as Chairman and Wade urged Woodfork to challenge Wilson's authority. Tr. 545. Woodfork asserts she learned for the first time at the March 10 meeting that there purportedly were terms of office for BTW's directors when Wilson announced at the meeting that he had removed Pate, Duncan, and Campanella from the board. Tr. 567. When she demanded of Wilson that he provide proof that he had any right to take such action, Wilson responded that although he did not have any by-laws, he had acted pursuant to Wade's orders. Tr. 567. Woodfork believed at that time that Wilson had concocted the terms of office in a scheme to get rid of the three directors, and he was merely trying to blame it all on Wade. Tr. 656. At some point Campanella and Young joined the fray, accusing Wade of interfering in BTW's affairs. According to Woodfork, the meeting was very ugly. Tr. 567-568.

44. Wilson nominated Young and Campanella to the board. Wilson also nominated Wade to be a director. All three were subsequently elected. Tr. 566-569.[13] Ware abstained from the vote, even though her own brother was under consideration. Tr. 1637.[14] Woodfork testified that she believed, on the basis of her conversations with Wade before the meeting, that the vote was meaningless because it was "going to be voided anyway." Tr. 568.

45. Within two months of the March, 1984 meeting, a further meeting was convened on May 19, 1984. *See* Bureau Ex. 13. Attending the meeting were Ware, Woodfork, Payne and Wade (as well as Payne's employer, Arike Logan, since the meeting was held in Dr. Logan's offices, Tr. 5672). Bureau Ex. 13. Wilson was not notified of this meeting. Tr. 1648, 1646; instead, he was sent a telegram after the meeting advising him of actions taken at the meeting. Tr. 1646. Wade ran the May, 1984 meeting as legal counsel. Tr. 774-775. At the meeting, Wade emphasized the importance of taking minutes of the May, 1984 meeting in order to "document that [what had happened before] was being voided." Tr. 572-573. Matters considered at the May, 1984 meeting including voiding the March, 1984 election of Campanella, Young and Wade, and removal of Wilson from his position as "chairman." Bureau Ex. 13.

46. Citing the importance of a clear record of the board's actions, Tr. 572-573, Wade stated that he would assist in the preparation of the minutes of the May, 1984 meeting. Tr. 573. Those minutes, prepared by Payne under Wade's direct supervision, are included in the record as Bureau Ex. 13, Tr. 572-573, 1028.[15] With respect to the reasons cited in the minutes for the voiding of the March, 1984 election (*i.e.*, a supposed lack of adequate notice of that meeting), Wade was the one who raised that supposed lack of notice. Tr. 573. With respect to the reasons underlying the removal of Wilson, Wade said he would provide those reasons. Tr. 573. Among the reasons for Wilson's removal listed in the May, 1984 minutes was a supposed failure by Wilson to file BTW's by-laws with the California Secretary of State. Bureau Ex. 13. As noted above, however, Wilson had never seen or possessed any by-laws, despite having repeatedly asked Wade for a copy. Tr. 1623. Also, it appears that, under California law, by-laws are not required to be filed with the Secretary of State. Tr. 221, 812.[16] Another supposed reason, cited in the minutes, for "displeasure" with Wilson was the fact that Young had been listed as the addressee for BTW matters sent out by a bank at which BTW had certain accounts. Bureau Ex. 13.

47. Also reflected in the minutes of the May, 1984 meeting is the election of Ware to serve as "acting chairman for a period of one month" and the employment of one "Gwen May" as a "contract employee". Bureau Ex. 13. Gwen May is a cousin of Wade's. Tr. 776.

48. Despite the representations in the minutes of the May 19, 1984, meeting, Ware could not recall how she became Acting Chairman. At best, she thinks she was Acting Chairman in the "1990's," but only served for a short period of time. Tr. 999, 1028-1029. However, in a written statement submitted to the Commission in November 1987 as part of Wade's "Opposition to Informal Objection," Ware represented that she became Acting Chairman after Wilson's "resignation" and has served in that capacity ever since. Bureau Ex. 30, p. 2. Ware could not recall where the information came from which formed the basis for her prepared statement. Tr. 1066-1068. She also could not recall Wilson's failure to file by-laws as being an important reason for removing him from office. Tr. 1080.

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[13] Woodfork does not recall that Campanella was in fact reelected at that meeting. Tr. 569. But Wilson recalled that he was reelected. Tr. 1637. The minutes of the May, 1984 meeting (Bureau Ex. 13) supported that recollection.

[14] Ware testified that she had actually voted *against* Wade in the March, 1984 meeting supposedly because "[h]e never said he wanted to be on the board." Tr. 1017. But Woodfork and Wilson -- the only other two people at the meeting who testified -- both clearly recalled that Ware abstained from voting. Tr. 568, 1637. As discussed, *supra*, Wade had instructed Woodfork to attend the meeting but "not to vote". Tr. 566, the approach apparently taken by Ware. Ware claimed that Wade did not give her instructions as to how to vote. Tr. 1017. However, she offered no credible explanation for her refusal to vote for her own brother as a director. Ware's testimony relative to the March, 1984 meeting is but another illustration of the inherent incredibility of her testimony overall.

[15] According to Ware, Payne preceded her as BTW's Secretary. Ware maintains that the directors agreed at an informal meeting to make her Secretary after Payne resigned. However, Ware could not identify any of the board members at the informal meeting who agreed to make her Secretary, and she was unable to be any more specific about when she became Secretary other than that it occurred in the 1980's. Tr. 979-980. Additionally, Ware does not recall ever taking notes at any meeting, and she apparently never maintained any corporate books or papers. Tr. 984, 1052-1053.R

[16] Other reasons cited in the May, 1984 minutes for displeasure with Wilson included his efforts to arrange a studio site and his trip to Las Vegas. With regard to the former, while the minutes refer to an "agreement" with a site owner with whom Wilson had discussed the matter, Wilson clearly testified that there was no "agreement" at all with that site owner, and that there was no basis for any "displeasure" by the board relative to his activities in connection with his discussions with the site owner. Tr. 1652. With regard to the Las Vegas trip, the minutes were contrary to the facts: the minutes referred to an "imprudent expenditure of funds", when in fact Wilson had spent his own money on the trip. Tr. 1654.

Although the minutes of the May 19, 1984, meeting represented that BTW had amended its by-laws, BTW did not submit any amended by-laws to the Commission.

49. Also reflected in the minutes of the May, 1984 meeting is the voiding of the March, 1984 election of Young and Wade and the reelection of Campanella to the board. Bureau Ex. 13. In this connection, Woodfork testified that Wade had told her that he believed that, if he were on the board, BTW might be held to some greater level of "accountability" by the Commission. Tr. 578. According to Woodfork, Wade believed that

> if he were on the board the FCC would look to the board for more accountability. . . . |I|f he were not on the board, they would just slap our hands. But if he were on the board, then there would be something about accountability, issues or questions raised about things.

Tr. 578.

50. Despite the board action relieving him as Chairman, Wilson subsequently received a telegram advising that he had been removed from the board entirely. Wilson was surprised by the telegram, given the fact that he had never even been informed that there was going to be a meeting to discuss his ouster. Tr. 1647-1648.

51. After receiving the telegram, Wilson telephoned Ware. Ware was not responsive to any of the questions that he asked her, particularly how the May 19, 1984, meeting could have been held in his absence, and why, if there was dissatisfaction with his leadership, no questions whatsoever had been raised earlier. Ware merely informed Wilson that it was upon Wade's advice that the board voted to remove him. Tr. 1747-1750. Wilson also spoke with Wade. Wade was adamant that Wilson's removal was what needed to be done. Tr. 1666.

52. A further meeting of BTW's Board was held in September or early October 1984 attended by Wilson and Young. Both complained that Wilson's chairmanship had been taken away from him wrongly and that Wade was starting to control the corporation. Wilson still wanted Young on the Board but Woodfork and Ware, the other directors at the meeting, opposed holding another election. At that point, Wilson severed his ties with BTW because it was obvious to him that Ware and Woodfork were controlled by Wade and that without opening up the Board to other members, Wilson would be outvoted by Ware and Woodfork. Tr 779. Woodfork does not deny she was controlled by Wade. She states she believed everything Wade said and did everything he asked her to do. Tr. 779. She claims she was naive to believe that Wade, a lawyer, would not do anything to harm BTW. Also, she was influenced by Wade's FCC background, knowledge of communications law, and the fact he was a "trusted friend." Tr. 780. As reflected in the findings, *below*, Woodfork's trust in Wade and Wade's intentions *viz a viz* BTW did not erode until September 1986.

53. Thereafter, on October 9, 1984, Wilson, Young, and Campanella obtained an indemnification agreement from Wade, pursuant to which they agreed to leave BTW's board. Bureau Exs. 11, 12. Campanella was very happy when Wade signed the letter permitting his unqualified removal from BTW because he felt that if Wade were capable of lying to the board, then Wade could very well have been engaged in activities that might later entangle Campanella "if an offended party cast a wide-enough net." Tr. 1457. Indeed, Campanella (as well as BTW's other original directors), was later threatened with a lawsuit in connection with the proposed sale of BTW's station to Hispanic Christian Communications Network. People associated with the proposed sale called Campanella and disturbed his family on a daily basis. They told him he might lose his home because the lawsuit would cost him so much. Campanella ultimately signed a release, although he has consistently maintained that he did so under duress. Tr. 1466-1469.

54. Campanella left the board after he came to believe that BTW was being compromised beyond the point of no return and that the ability of any board member to exercise his or her fiduciary responsibility was being jeopardized. Tr. 1425. Campanella viewed BTW as a unique opportunity for African-Americans to operate a public broadcast station in a major market. Referring to Wade, Campanella testified that it struck him as misguided to toss away this rare and extraordinary opportunity because of one's quest for personal gain. Tr. 1484-1487.

55. Following the departure of Campanella, Wilson, Duncan, and Pate, the only active members of BTW's original board were Woodfork, Ware, and Payne.[17] The Commission was not informed that BTW's board, originally consisting of eight individuals, was now reduced by at least half that number.

56. After Wilson, Campanella, Duncan, and Pate were removed from the board, Wade personally became more active in BTW's affairs. Wade ran BTW's board meetings. He told the board what to do. The board members never formally consented to Wade presiding over their meetings, he just did it, and the board essentially acquiesced. Tr. 774-775. Wade also began holding himself out in a number of documents as an officer of BTW, notwithstanding the fact that he had not been elected an officer of BTW.

57. In January 1985, Wade filed an application for "Federal Assistance" with the National Telecommunications and Information Administration (NTIA). Wade identified himself in the application as Vice President of BTW. Bureau Ex. 14. Although BTW's board had authorized Wade to file the application, it had not authorized him to hold himself out as an officer of the corporation. Tr. 580-583.

58. Ware maintains in a prepared statement that she "authorized" Wade to sign the NTIA and other forms and documents as Vice President and that Woodfork subsequently told her that she did likewise upon Wade's request. Bureau Ex. 30, p. 2. In contrast, Woodfork states that Wade was never given authorization to represent himself as being an officer. Tr. 676. In fact, Woodfork testified to having been involved in a spat with Wade on one occasion when

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[17] Cordell did not actively participate in any BTW matters following the initial board meeting in the Spring of 1983. Tr. 938. Moreover, the extent to which Payne participated in BTW's affairs, if at all, beyond this point is unclear. Assuming, *arguendo*, that Wade's purported by-laws are valid, Payne's term would have ended in November of 1984. Bureau Ex. 5, p. 16.

she challenged him for having held himself out as an officer during a meeting with a prospective source of funding. Tr. 584-590).[18]

59. On March 8, 1985, almost two years after BTW was granted a construction permit, Wade filed an Ownership Report (FCC form 323-E) with the Commission on behalf of BTW. Bureau Ex. 10, pp. 1-3. Woodfork signed the Ownership Report in blank at Wade's direction. Tr. 558, 937. Woodfork told Wade that she wanted to see the completed form, but Wade told her there was no time. Tr. 559. The Ownership Report represented that the information was current as of April 30, 1983, and it identified BTW's governing board as consisting of the eight directors to whom the construction permit had been granted. Although it listed Woodfork as a Vice President; Ware as a Vice President and Treasurer; Cordell as President; and Wilson as Chairman (Bureau Ex. 10, pp. 1, 3), BTW's board never elected any of these individuals to these positions. Tr. 937.

60. Less than two weeks later, on March 18, 1985, BTW filed another Ownership Report. This Ownership Report was signed by Wade, who identified himself as Vice President, and it contained information as of January 14, 1984. Wade represented in this second Ownership Report that BTW's board consisted of four persons: Woodfork, (no office); Ware, Treasurer and Secretary; Cordell, Vice President; and Wade, Vice President (but not a board member). The Ownership Report further stated that Wade had been elected a Vice President by BTW's board. Bureau Ex. 10, pp. 4-5. Woodfork denies ever having voted to elect any of these individuals to the positions indicated. Tr. 938.

61. On April 13, 1985, Wade signed a letter of intent, on behalf of BTW, with Radio Telecom & Technology, Inc. (RTT). Wade identified himself as Vice President of BTW. Bureau Ex. 15, p. 3. However, according to Woodfork, Wade had never been elected Vice President of the corporation. Tr. 603.

62. On May 24, 1985, BTW appears to have attempted to execute an amendment to its Articles of Incorporation. The amendment proposed to change BTW from a nonprofit "mutual benefit" corporation to a nonprofit "public benefit" corporation. It appears to have been signed by Wade, who identifies himself as Vice President, and by an individual by the name of Hope S. Smith, who identifies herself as BTW's Assistant Secretary. The amendment recites that the change in BTW's Articles of Incorporation had been duly approved by BTW's board. Bureau Ex. 6, p. 2. Woodfork denies ever voting to amend BTW's Articles of Incorporation or even being asked to vote to amend BTW's Articles of Incorporation. Tr. 553-554. Although the amendment was submitted to the California Secretary of State,[19] it was not filed with the Commission.

63. In documents filed with the California Secretary of State on behalf of BTW, Wade held himself out as the corporation's Vice President. He also identified his sister as BTW's Chief Financial Officer, and Woodfork as BTW's Chief Executive Officer. Tr. 1065.

64. Ware signed a resolution by which Wade purportedly was elected Vice President on September 2, 1985, although Wade had already been holding himself out as such prior to that time. Bureau Ex. 16; Tr. 1025-1026. Ware executed the resolution because she claims BTW needed to give Wade the authority to sign papers. Ware does not know who prepared the resolution, and she cannot recall another instance in which she signed a resolution when someone became an officer of BTW. Tr. 1025-1026.

65. Arlene Stevens signed Woodfork's name to the resolution, purportedly on Woodfork's behalf. Stevens was Wade's girlfriend. She had no position with BTW. Tr. 585-586, 677, 1024-1027. However, Woodfork did not authorize anyone to sign her name to any resolution, and there was no election of Wade to the position of Vice President. According to Woodfork, the document is a total fabrication. Tr. 590-592.

66. On October 22, 1985, Wade directed a letter to a Reverend K. C. Chambers in which he offered Rev. Chambers "four seats on an eleven person Board of Directors of Workshop and thirty-five percent equity interest in the for-profit affiliate-subsidiary" in exchange for a minimum of $2.2 million. Bureau Ex. 17. Wade identified himself in the letter as BTW's General Manager. The letter bears the countersignatures of Woodfork and Ware under a line reading "By Direction of the Board of Directors." Wade became BTW's General Manager by letting it be known that he wanted the position. According to Woodfork, Wade knew more than she or Ware, so Woodfork did not object to Wade holding himself out as General Manager. There was, however, no board action in the formal sense making him General Manager. Tr. 589-590, 767.[20]

67. Wade, on behalf of BTW, entered into an "Agreement to Purchase Air Time" on October 28, 1985, with United Studios Company. The agreement, which specified rates for the purchase of broadcast time on Channel 68, was signed by Wade. He identified himself in the agreement as Vice President. Bureau Ex. 35.

68. On November 19, 1985, a board meeting purportedly was held at which Woodfork and Ware elected Wade a director, Executive Vice President, and Manager. Bureau Ex. 18. However, Woodfork states that she never attended any such meeting, and everything in the minutes of that purported meeting[21] is a fabrication. Tr. 592-593. Ware initially testified that she thought Wade had been elected a director, but she did not know when or by whom. Tr. 1031-1032.[22] Later, she said she recalled approving him to hold the referenced positions, albeit on an "informal basis." Tr. 1224.

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[18] Woodfork's objection to Wade's holding himself out as an officer of BTW rests, at least in part, from her belief that only directors could be officers. Tr. 590, 594.

[19] By letter, dated June 28, 1985, the California Secretary of State notified Wade that the proposed amendment had been rejected because it was not executed properly. Bureau Ex. 6, p. 1.

[20] Woodfork, however, objected to Wade identifying himself as an officer of BTW during a meeting with Rev. Chambers. Tr. 584-590. According to Woodfork, Wade told Chambers that he was president of BTW and that his girlfriend, Arlene Stevens, was vice president. Tr. 584-585. Woodfork relates that Stevens, who held no position with BTW, was always with Wade when he was conducting corporate affairs. Tr. 585. Woodfork further relates that in turning down Wade's offer, Chambers warned her that "these people are going to break your heart." Tr. 586. Woodfork ignored his warning about Wade's intentions. Tr. 642.

[21] The minutes were filed by Wade in support of his November 23, 1987, "Opposition to Informal Objection."

[22] The purported minutes state that Cordell was absent from

69. Although Wade supposedly became a director and Executive Vice President at a board meeting purportedly held on November *19*, 1985 Wade filed a further Ownership Report on April 1, 1987, which indicated otherwise. The Ownership Report represents that as of November *18*, 1985 - - before the meeting was even held - - Wade was already a director, Executive Vice President, and, additionally, BTW's Chief Executive Officer. Bureau Ex. 10, pp. 6-8. Moreover, although Ware purportedly was elected Acting Chairman for a period of only one month as a result of the May 19, 1985, meeting (Bureau Ex. 13), the Ownership Report represented that she was still Acting Chairman on November 18, 1985. Ware could not recall how she became Acting Chairman, reiterating that BTW did many things on an informal basis. Tr. 1066-1067. Nor could she explain how she remained Acting Chairman beyond the one-month period. Tr. 1070. Ware went so far as to suggest that she and Woodfork took turns at various times acting as Chairman. Tr. 1072.

70. On July 7, 1986, Wade issued a "Status Report and Immediate Term Business Plan" for BTW. Bureau Ex. 19. The document represented that Wade was then a director of BTW and was expected to be named as the company's President. Bureau Ex. 19, p. 4. However, Woodfork never approved the document. Tr. 627-635.

71. On July 22, 1986, Wade submitted a Supplemental Local Economic Action Program Report (Supplemental LEAP Report) to the Community Development Department of the City of Los Angeles. He identified himself therein as a director of BTW. Ware could not explain how Wade came to be a director in July of 1986. Tr. 1071.

72. On July 25, 1986, there was filed with the California Secretary of State a Uniform Commercial Code "Financing Statement" between debtor BTW and a secured party by the name of Harold Rick (Rick). Wade signed the Financing Statement on behalf of BTW. Bureau Ex. 20. Woodfork, recalls that Rick wanted to buy air time on BTW's station and that he loaned BTW at least $231,000. Tr. 604-607. The Financing Statement covered the following "property":

> All assets, tangible and intangible, including permits, licensees and authorizations issued by the Federal Communications Commission, *except* as follows: broadcast transmission and studio equipment and all assets hereafter acquired.

Bureau Ex. 20. Ware does not recall ever seeing the Financial Statement. Tr. 1035. Nor does she recall any discussion among the board members about giving as collateral any of the "assets" listed in the Financial Statement. Tr. 1038. Neither the UCC filing nor any other documents relating to Harold Rick's possible future interest in BTW was filed with the Commission.

73. On August 25, 1986, Wade, on behalf of BTW, filed with the Commission an Application for Extension of Construction Permit (FCC Form 701). Bureau Ex. 22. Wade signed the application as Vice President, although he did not, according to Woodfork, hold any such position. Bureau Ex. 22, p. 2; Tr. 650.[23] Although the application represents that the exhibit affixed thereto was prepared by or under Woodfork's direction, Woodfork never saw the application at the time if was filed; she never prepared any part of the application; no part was prepared under her direction; and she never authorized anyone to use her name in the application. Bureau Ex. 22, p. 2; Tr. 647-658. Additionally, Woodfork states that she and Ware were the only directors of BTW at the time, and she never authorized Wade to file the application. Tr. 651-652.

74. In August of 1986, Woodfork and Wade had a good working relationship, although there was evidence that a conflict between them was taking root. Woodfork desired to participate in all of BTW's affairs to the fullest extent. However, the more she insisted on participating, the less Wade allowed her to do so. Wade informed her about BTW's affairs on what he called a "need-to-know" basis. Tr. 649-650.

75. During the latter part of 1985 and continuing into 1986, BTW operated out of an office in the Los Angeles area. Tr. 1202. During this period, Ware recalls writing checks to Wade for his rent and "stuff like that." Ware claims that she and Woodfork agreed to pay Wade for his basic needs. Tr. 1208-1210. However, Woodfork maintains that BTW's board never even talked about paying Wade any money for his legal services. Tr. 689. Campanella, too, had no understanding during the time he was on the board that Wade would be paid for his services. Tr. 1412-1413. Wilson says he discussed the subject of money with Wade early on. However, it was agreed that all renumeration would be deferred until the station was operational. According to Wilson, the subject of paying Wade was never put to the board for a vote for the simple reason that the corporation had no money. Tr. 1645-1646.

76. The payment of money to Wade was done on a relatively informal basis. Wade basically told Ware how much money he needed without so much as submitting any bills or itemizing the expenses for which he was seeking reimbursement. Ware just accepted what Wade told her and issued him checks from BTW's account. Tr. 1231-1232. According to Woodfork, Wade and his girlfriend were using BTW's checkbook "like it was their own personal account." Tr. 661.

77. Among the checks that Wade received was one in the amount of $1,750, for his move to Los Angeles from Reno, Nevada. Tr. 1208-1209, 1213. That particular check was signed only by Ware, even though all BTW checks required the signatures of two authorized persons. Bureau Ex. 21; Tr. 983, 1215. On April 22, 1986, Wade received another check from BTW for $1,800 for legal services. Although this check indeed bore two signatures, Wade provided one

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the November 19, 1985, meeting. However, the set of by-laws submitted by Wade, assuming *arguendo* that they are valid, indicate that Cordell's term had already expired. Bureau Ex. 5, p. 16.

[23] Ware testified that Wade was approved as a director and Executive Vice President at the November 19, 1985, board meeting because he said he needed those titles in order to file BTW's extension request. However, Wade did not identify himself in the extension request as a director, a fact which, when pointed out to her, Ware found surprising. Tr. 1225-1226. Ware also was unable to explain why Wade represented himself as Vice President in the extension request if he purportedly held the title of Executive Vice President. When pressed by the Presiding Judge as to whether Wade was indeed Vice President, Ware responded, "Well, what can I say, sir." Tr. 1226.

of them, and his girlfriend, Stevens, who signed Ware's name, provided the other. Ware testified that the $1,800 check "seemed" like one of the checks she authorized Stevens to sign, but she did not know why the money had been paid to Wade. Tr. 1217. Ware did not inform Woodfork about these disbursements from BTW's account either because there wasn't time or Woodfork was not available. Tr. 1217-1218. Many other checks were issued without Woodfork's knowledge or consent. Tr. 682-688.

78. Wade's girlfriend, Stevens, also signed other so-called "routine disbursements" for BTW without the board's authority. Tr. 1047. For example, Stevens signed Ware's name to checks for a particular project that Ware knew little or nothing about. The checks were made payable to a transcription company in connection with an FCC proceeding in which Stevens was involved. It was Ware's understanding that the checks represented money that BTW owed to Stevens. Tr. 1121-1122.

79. In September 1986, Woodfork went to the BTW office when no one was present and discovered documents which, upon review, she found shocking.[24] Among them was the resolution of September 2, 1985, Bureau Ex. 16, containing her unauthorized signature. Woodfork also discovered the referenced BTW checks for questionable disbursements and information about the financial arrangement with Harold Rick. She also obtained a document in Wade's handwriting depicting terms of office of BTW's original eight directors and describing three "options" for the election of individuals to various positions within the corporation. Bureau Ex. 28; Tr. 1354-1355. According to Woodfork, it was a rude awakening that something was very seriously wrong with BTW. Tr. 658-660.

80. Woodfork questioned Wade to no avail about what she had learned, and she prevailed upon several attorneys in a bid to have them help her "straighten out" the situation. Tr. 661. Wade prevented anyone whom Woodfork brought to the office from examining BTW's books. Wade also told people that Woodfork was a trouble-maker and deranged. Tr. 670-671.

81. Ultimately, Woodfork retained an attorney who directed a letter to Wade suggesting that he, Woodfork, and Wade meet to discuss BTW's state of affairs. The meeting never took place and shortly, thereafter, Wade informed Woodfork, by letter dated December 18, 1986, that her term of office had expired. Wade signed the letter as BTW's Vice President. Bureau Ex. 24, p. 2; Tr. 672.

82. On January 15, 1987, Woodfork arranged a meeting of BTW's board and the creditors of which she was aware. Her intention was to confront Wade about the representations he had made about being a director and a Vice President. Wade initially admitted to those assembled at the meeting that he had never been elected as a director. Later, however, he insisted that he was indeed a director and that his sister had put him on the board after everyone else's term had expired. Wade also tried to explain that he had been authorized to hold himself out as an officer of the corporation, but Woodfork denied that any such authorization had ever been given. Tr. 673-676.

83. Wade subsequently attempted to resolve his dispute with Woodfork by offering her any position with BTW that she wanted, except a seat on BTW's board of directors. The proposed settlement package also included the payment of money to Woodfork as well as stock in an undisclosed company. Tr. 730, 733. Woodfork rejected Wade's overtures. Tr. 732.

84. On or about February 25, 1987, BTW's television station commenced operation. On that date, Wade filed the captioned application for license to cover BTW's construction permit. Wade signed the application as Vice President.

85. On June 9, 1987, Wade and Ware executed an amendment to BTW's Articles of Incorporation. Wade and Ware signed the amendment, identifying themselves as Vice President and Secretary, respectively. The amendment changed BTW from a nonprofit "mutual benefit" corporation to a nonprofit "public benefit" corporation. Bureau Ex. 7. Although the amendment appears on its face to have been filed with the California Secretary of State, BTW did not file the amendment with the Commission.

86. Although BTW's Articles of Incorporation, which were filed with the Commission in January 1982, state that BTW was originally a nonprofit "mutual benefit" corporation (Bureau Ex. 2, p. 2), Wade's by-laws, which purportedly were also in existence at that time but were not filed with the Commission,[25] represent otherwise. The by-laws represent that BTW was already a nonprofit "public benefit" corporation. Bureau Ex. 5.

87. Moreover, the by-laws submitted by Wade represent that, in the event the corporation owns or holds any property upon its dissolution and winding up, after paying or adequately providing for its debts and obligations, the directors shall dispose of the remaining property "in accordance with the articles of incorporation." Bureau Ex. 5, p. 8. However, BTW's Article of Incorporation, which were in existence in January 1982, make absolutely no reference to any procedures to be followed upon dissolution or winding up. Bureau Ex. 2, p. 2. The more recent amendment to BTW's Articles of Incorporation does make such a reference. Bureau Ex. 7, p. 3. The record, therefore, provides compelling evidence, which has not been rebutted, that the purported by-laws were prepared by Wade in June 1987 concurrent with the amendment to BTW's Articles of Incorporation.

88. On August 8, 1987, the Commission ordered the station off the air because of unauthorized construction.

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[24] Woodfork sought to enter the BTW offices to pick up a brochure she could use in her on-going efforts to raise funds for BTW. Tr. 536-537. As a director of BTW, she had been given a key by Wade but was under the impression the key did not work. Tr. 536, 868-870, 702. However, to her surprise, the key did, in fact, work. Tr. 536, 704.

[25] The by-laws were first submitted to the Commission by Wade in support of his "Opposition to Informal Objection," filed on November 23, 1987. The by-laws are unsigned and undated. Wade represented therein that the by-laws were drafted and executed on or about the time he filed BTW's full-power application for Channel 68 in Los Angeles.

CONCLUSIONS OF LAW

Issue (a): Unauthorized Transfer or Exercise of Control/Assignment of License

89. The first designated issue is directed to the question of whether control of BTW was transferred without Commission authorization or otherwise exercised by unauthorized persons in violation of Section 310(d) of the Communications Act. Section 310(d) states in pertinent part:

> No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

90. Traditionally, the Commission has looked beyond legal title in determining whether a transfer of control has occurred. Rather, control has been defined as embracing any act vesting in a new entity or individual the right to determine the basic policies concerning the operation of the station. *See Southwest Texas Public Broadcasting Council*, 85 FCC 2d 713, 715 (1981), *citing, WHDH, Inc.*, 17 FCC 2d 856 (1969), *aff'd*, 20 RR 2d 2052 (D.C. Cir. 1970). It has been held that Section 310(d) of the Communications Act of 1934, as amended, contemplates every form of control, actual or legal, direct, indirect, negative or affirmative, over basic operating policies. *Southwest Texas, supra, citing, Lorain Journal Company v. FCC*, 351 F.2d 824 (D.C. Cir. 1965).

91. Legal control of a nonprofit, nonmembership corporation, such as BTW, lies in its directors. A legal or *de jure* transfer of control may occur when a structural change, such as an amendment to the corporation's by-laws, affects how the corporation's governing board is chosen. *See e.g., Pacifica Foundation*, 1 RR 2d 747 (1964) (structural change affected by revision of nonprofit corporation's by-laws constitutes a transfer of legal control even though composition of the governing board was not altered.). A legal or *de jure* transfer of control also may occur when there are significant changes in the composition of the board of directors. *See e.g., Pacifica Foundation*, 41 FCC 2d 71 (Rev. Bd. 1973) (net effect of gradual changes in composition of corporation's board constitutes transfer of control.). A *de facto* transfer of control, on the other hand, may occur when those named to the corporation's governing board do not or cannot exercise the control with which they have been charged. *See e.g., Southwest Texas, supra.*

92. The method of analysis for determining whether a *de facto* transfer of control has taken place is similar to that applied to traditional stock corporations. Generally, the Commission will examine evidence as to who is exercising control of policies regarding finances, personnel matters, and programming. *Southwest Texas, supra.*

93. In the instant case, the only persons who were ever authorized by the Commission to exercise control of BTW were the original eight directors listed in BTW's application. They are: Mary Woodfork, Clint Wilson, Gary Cordell, Roy Campanella, Jr., Linda Pate, Titilola Payne Parker, Jerrome Duncan, and Rosa Ware. The record establishes, however, that Booker Wade controlled BTW both before and after BTW received its construction permit.

94. BTW applied for authorization to construct a noncommercial educational television on Channel 68 in Los Angeles more than a decade ago. The purpose, at least according to the original principals, was to place on the air the nation's second-only (behind Howard University's WHMM(TV), Washington, D.C.) minority owned and operated television facility. The station was to have provided a unique service to the vast minority population in the greater Los Angeles Area.

95. Wade, however, did not share the dream envisioned by members of BTW's original board. Wade had his self interest in mind. Wade planned to establish a for-profit production company which would sell programming to BTW's station as well as the other stations in his low-power television network. To this end, Wade initially put together an application in the name of BTW for Channel 68 in Los Angeles as an LPTV station. Wade's game plan was briefly frustrated when a mutually exclusive application for a full-power station was filed for Channel 68. Wade then decided that he, too, would file a full-power application.

96. The record leaves no doubt that Wade was completely and exclusively in control of the application process. Wade prepared the application, making all the decisions concerning its contents. Most importantly, Wade handpicked the eight directors. Also, Wade named BTW's officers. None of the other directors participated in these decisions or, for that matter, were even consulted. The only involvement of a director in the application process was Wade's sister, Ware, who signed the application on behalf of BTW. However, Ware did not assist in preparing the application, she did not furnish any information, and she did not even verify any of the representations in the application.

97. The record also reveals that Wade was solely responsible for prosecuting the application through hearing. Incredibly, with the exception of Wilson, the directors played no role in the prosecution of BTW's application and appear to be unaware that BTW was involved in a comparative hearing. Wilson was the only BTW principal who testified at the comparative hearing for the Channel 68 construction permit. Notwithstanding that the seven directors designated in the application were in place, Wade, without seeking the approval of or even consulting the directors, unilaterally named Wilson to the Board and designated him as Chairman. Wade made clear to Wilson that as the organizer of BTW he made the decisions and that it was not necessary for Wilson to contact the other directors to determine whether they wanted him to serve as Chairman. Thus, Wade's conduct during the preparation and prosecution stages makes readily apparent that the non-profit corporation denoted in BTW's application was merely an elaborate facade constructed by Wade to accomplish his goal of getting the Channel 68 grant. It also makes clear that Wade intended from the outset that he, not BTW's directors, would control the affairs of the corporation. Examination of the findings relating to BTW's post-grant activities buttresses this conclusion.

98. Following grant of the construction permit in April 1983, Wade's gameplan to assure continuing control of BTW was to withhold BTW's by-laws from its directors. Wade's gambit served a two-fold purpose. Without by-laws, the Board was unable to organize itself properly. Indeed, Campanella, Wilson, and Pate testified to feeling hampered,

frustrated, and powerless by their inability to carry out their duties. Without knowing the nature or extent of its operating parameters, the board functioned like a ship at sea without a rudder.

99. Also, by withholding the by-laws, Wade unilaterally determined who would remain on the board. Thus, whenever it was necessary or convenient to remove a director, Wade (though not a director himself) could do so by announcing the expiration of the subject director's term. In that way, Wade eliminated the directors who posed the greatest threat to his authority and plans and assured a friendly and cooperative board.

100. The first directors whom Wade ordered off the board, purportedly on the basis that their terms had expired, were the two lawyers, Pate and Duncan, and Campanella. Campanella, whose testimony without question was articulate, compelling, and entirely credible, had the most media experience of all the original directors and, thus, was in a position to challenge Wade's business and staff plans. Campanella was the most outspoken critic of the manner in which Wade intended to link his for-profit low-power television network and planned production company with BTW's noncommercial station.

101. There is no doubt that Wade orchestrated Wilson's elimination from the board, as well. Wade instigated the turmoil that developed between Wilson and Woodfork by directing Woodfork to challenge Wilson at every step of the way. There is every reason to believe that Wade also fomented further internal strife through his sister, Rosa Ware. In this regard, Ware was nothing more than Wade's pawn. With Ware as BTW's Treasurer -- a critical position to which Wade unilaterally named her -- Wade had unrestricted and unchallenged access to the company's funds of which he and his girlfriend, Arlene Stevens, later made personal use.

102. When Wilson attempted to exercise his independent authority as Chairman, his fate with BTW was sealed. Wade was briefly outmaneuvered by Wilson when, at a meeting on March 10, 1984, Wade and an attorney, Greg Young, were elected to fill the seats formerly held by Pate and Duncan, and Campanella was re-elected. However, with the help of his sister, and Woodfork, who admits she was then under Wade's control and did everything he asked her to do, Wade succeeded in quelling the shortlived rebellion.

103. At a board meeting on May 19, 1984 run by Wade, Ware and Woodfork, on the basis of trumped up charges against Wilson and Wade's spurious claim that adequate notice had not been given for the March 1984 meeting, voided the election of Campanella, Young, and Wade and removed Wilson as Chairman. In this connection, Wade did not want to be a director because of his belief that BTW would have been held to a higher level of accountability in its dealings before the FCC with the presence of a former Commission attorney on the board. Furthermore, Wade could control BTW's directors just as easily from the sidelines by dictating the actions of Woodfork and Ware.

104. The record reflects that Wilson and Young made one final attempt to wrest control of BTW from Wade. This attempt was unsuccessful when, at a fall 1984 meeting, Woodfork and Ware opposed holding another election. At that point, Wilson, Young and Campanella severed their remaining ties with BTW. With only Woodfork and Ware on the board, Wade's dominance of BTW's affairs became even more manifest. Wade thereafter ran the board meetings and the directors served at Wade's pleasure, rather than vice versa.

105. Woodfork, too, was eliminated from the board when she posed a threat to him. Woodfork's enlightenment came as the result of her visit to the BTW office over Labor Day weekend, 1986, and her discovery of documentary evidence of Wade's improper activities. Woodfork thereafter alerted creditors to Wade's questionable practices and sought the assistance of outside counsel. Wade removed this latest threat to his gameplan by informing Woodfork that her term of office had expired. Thus, of the original eight directors, only Ware, Wade's sister and trusted pawn, remained. Following Woodfork's compelled departure from BTW, Wade perfected his absolute, iron-clad control over the permittee corporation.

106. Wade's *de facto* control of BTW is further evidenced by the manner in which he held himself out to the public and the Commission. As early as January 1985, Wade identified himself as a Vice President in an NTIA application that he prepared and filed on behalf of BTW. Wade also held himself out as a Vice President in a letter of intent that he signed on behalf of BTW on April 13, 1985, with Radio Telecom & Technology, Inc. Wade prepared and presumably furnished all of the information contained in BTW's three Ownership Reports, and he signed two of them on behalf of BTW. On May 24, 1985, Wade attempted to amend BTW's Articles of Incorporation on behalf of BTW, and he identified himself in the amendment as a Vice President of the corporation. In a letter, dated October 22, 1985, Wade proposed to sell seats on BTW's board of directors in exchange for money. He also executed an Agreement to Purchase Air Time for BTW's noncommercial station on October 28, 1985. Wade identified himself as a director of BTW in a report submitted to the Community Development Department of the City of Los Angeles on July 24, 1986. On July 25, 1986, Wade filed a UCC Financing Statement with the California Secretary of State in which he pledged as collateral to Harold Rick BTW's construction permit and other FCC authorizations in exchange for money. Wade also filed an application with the Commission for an extension of construction permit, identifying himself therein as a Vice President of BTW. Wade also had unrestricted access to BTW's funds and drew money from BTW's checkbook at his discretion.

107. Based on the foregoing, control of BTW indeed was exercised by Wade, an unauthorized person, without Commission authorization, in flagrant violation of Section 310(d) of the Communications Act of 1934, as amended. As shown above, Wade exercised unilateral control from the outset over BTW's affairs and never relinquished that control. The extent to which Wade controlled BTW's affairs is evidenced by his unilateral actions removing directors from the board, naming persons to be officers of the corporation, entering into agreements and filing applications, and by his control and unrestricted use of the company's finances.

108. Wade's scheme to seize control of BTW succeeded because the eight directors named to the governing board abdicated its responsibility to control BTW. The board members' passivity, both during the prosecution phase and after the construction permit was granted, made possible Wade's takeover of BTW. They, therefore, bear heavy responsibility for the violation of Section 310(d) of the Act. Wade was BTW's attorney. His role was to advise the Board, not make BTW's decisions. The only persons au-

thorized by the Commission to exercise control of BTW were the eight individuals to whom the construction permit was granted in April 1983. Instead of serving at the pleasure of the Board, the Board members served at the pleasure of Wade. The Board had ample opportunity to assert its authority over Wade. When Wade failed to produce by-laws despite repeated requests to do so, the Board could have and should have fired Wade as its attorney. In this regard, Young, a local attorney, was willing and able to assist BTW in its business affairs. The Board did not fire Wade, nor did it adopt its own by-laws. Moreover, board members repeatedly failed to challenge Wade's assertions that their terms of office had expired; instead, they walked away from the corporation. Other directors resigned, albeit under protest. In the final analysis, Wade assumption of control was a combination of Wade's malfeasance and the Board's failure to exercise the control with which they had been charged.

Issue (b) - Misrepresentation/Lack of Candor

109. It is well established that an intent to deceive is the *sine quo non* of a misrepresentation issue. *Armando Garcia*, 3 FCC Rcd 1065, 1067 (Rev. Bd. 1988), *rev. denied*, 3 FCC Rcd 4767 (1988). While misrepresentations involve false statements of fact made with an intent to deceive, lack of candor involves concealment, evasion and other failure to be fully forthcoming. Both represent deceit, differing only in form. *Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983). Absolute candor is perhaps the foremost prerequisite for FCC licenseeship. *Catoctin Broadcasting Corp. of New York*, 2 FCC Rcd 2126 (Rev. Bd. 1987), *aff'd in pertinent part*, 4 FCC Rcd 2553 (1989), *recon. denied*, 4 FCC Rcd 6312 (1989); *Mid Ohio Communications*, 104 FCC 2d 572 (Rev. Bd. 1986), *rev. denied*, 5 FCC Rcd 940 (1990); *recon. dismissed in part, denied in part*, 5 FCC Rcd 4596 (1990).

110. The record is replete with instances in which misrepresentations were made and/or a lack of candor was displayed to the Commission. Foremost are the misrepresentations reflected in the November 1981 application for the construction permit. Wade was depicted in the application solely as counsel to BTW. Thus, the impression was created that Wade's role was limited to an advisory capacity and that the governing board named in the application, and whom the Commission regarded as the principals of BTW, was and would be in control. In reality, the record makes clear, Wade was the real party in interest and the governing board was merely a cover to disguise Wade's pursuit of his personal ambitions. To sustain the aura of legitimacy, the application affirmatively represented that Ware, Campanella, Woodfork, Payne and Pate, a majority of the then seven directors, authorized Ware to file the application. Bureau Ex. 1, p. 14. However, Campanella, Woodfork and Pate deny having given such authorization. In fact, Ware concedes that she never spoke to any of the other directors before the construction permit was granted to BTW in 1983. The application also identifies Rosa Ware as the individual under whose direction all non-engineering exhibits were prepared. Bureau Ex. 1, p. 4. However, the evidence reveals that Ware did nothing more than sign the application and return it to Wade. Simply put, the non-engineering parts of the application were prepared solely by Wade without the knowledge or approval of the directors, a fact concealed from the Commission.

111. Subsequent to the filing of the application, Wade made numerous misstatement in documents filed with the Commission in order to perpetuate the myth that the corporation was functioning as representated with the governing board in charge. In the unsigned amendment to BTW's application filed January 8, 1982, Wade represented that Cordell was BTW's President and would be its General Manager when the station became operational and that Ware was BTW's Vice President and would be the station's Director of Public Affairs. The record evidence reveals, however, that the directors never elected Cordell or Ware to these offices and never agreed to their holding the assigned management positions when the station went on the air.

112. Similarly, the Ownership Reports submitted by Wade also contain significant misrepresentations. BTW's first Ownership Report was filed on March 8, 1985, and contained information as of April 30, 1983. The Ownership Report represented that Woodfork was a BTW Vice President; Ware was a Vice President and BTW's Treasurer; Cordell was BTW's President; and Wilson was BTW's Chairman. However, the record reveals that none of these persons was elected by BTW's board of directors to any of these positions. Although Woodfork certified to the truthfulness of the representations in BTW's first Ownership Report, she signed the form in blank at Wade's specific directions. Thus, Woodfork cannot be completely absolved of indirectly participating in a fraud upon the Commission. Wade, on the other hand, ultimately must be held accountable for the misrepresentations made to the Commission in BTW's first Ownership Report, since Wade alone deliberately filed the Ownership Report containing information which he knew to be false.

113. BTW filed a second Ownership Report on March 18, 1985, less than two weeks after the first Ownership Report. It contained information as of January 14, 1985. Wade, who signed the second Ownership Report, identified himself as Vice President even though the record overwhelmingly reflects that he never held that position. Indeed, the only document that could even arguably suggest that Wade was elected to be an officer of BTW is a corporate resolution dated September 2, 1986. The resolution was executed by Wade's sister and girlfriend. The latter, Arlene Stevens, who never was a director, signed Woodfork's name to the resolution without Woodfork's authorization. The only conclusion that could possible be drawn is that the resolution is a complete fabrication.

114. Wade also signed BTW's third Ownership Report which was filed on April 1, 1987, and contained information as of November 18, 1985. Wade signed the third Ownership Report as Vice President, even though the Ownership Report states that Wade held the positions of director, Executive Vice President, and CEO. Thus, setting aside the fact that the Ownership Report is internally inconsistent, the record evidence is uncontroverted that Wade was never elected to any of these positions, and the representations therein were obviously false. The only evidence that could arguably even suggest that Wade was ever elected a director or Executive Vice President are the minutes of a purported BTW board meeting held on November 19, 1985 -- *after* the effective date of the third Ownership Report. Moreover, although Woodwork and Ware are identified in the minutes as the only two directors who attended the November 19, 1985, meeting, Woodfork categorically denies ever participating in any meeting in which Wade was approved as an officer or director of

the corporation, and Ware could only recall Wade being named a director, if at all, on an "informal basis." Consequently, it is concluded that the November 19, 1985, meeting never took place, the minutes of that meeting are bogus, and Wade was not elected a director or Executive Vice President.

115. Wade also committed a further misrepresentation in his request, filed on August 25, 1986, for an extension of time to complete construction of BTW's station. Wade identified himself in the FCC Form 701 as BTW's Vice President. However, Woodfork denies that Wade ever was elected to the position of Vice President, and his representation as such is, as discussed above, inconsistent with the minutes of the November 19, 1985, meeting at which Wade was supposed to have been elected a director and Executive Vice President. Moreover, although the extension request represents that the exhibit affixed thereto was prepared by or under the direction of Mary Woodfork, Woodfork flatly denies ever seeing the application, ever preparing any part of the application, ever having any portion prepared under her direction, ever authorizing her name to be used in the application, or ever approving the filing of the application.

116. It is also clear that Wade did not execute by-laws for BTW in 1981, as he falsely represented to the Commission in his "Opposition to Informal Objection." The overwhelming evidence establishes that the by-laws (Bureau Ex. 5) came into existence sometime in 1987. As reflected in the findings, with the exception of Wade's sister, whose testimony lacks credibility (see note 12), none of the original directors who testified in this proceeding ever saw by-laws for BTW during their tenures on the board. Also, as reflected in findings 86 and 87, the inconsistencies reflected in pertinent documents compels the conclusion that the purported by-laws were prepared by Wade concurrent with and in contemplation of the June 1987 amendment to BTW's Articles of Incorporation.

117. Finally, Wade's claim that he currently is a director of BTW has no basis in fact. The evidence amply supports the conclusion that Wade was never elected to a seat on BTW's board, and his participation in the affairs and control of the corporate permittee has always been and remains without authority.

118. In sum, it is abundantly clear that Wade made numerous misrepresentations in filings with the Commission in order to hide the fact that he, rather than the directors, were in control of BTW. Wade deliberately misled the Commission by misrepresentations in BTW's application and amendments thereto; he intentionally held himself out as holding positions to which he had never been legitimately elected; he deceived the agency in claiming that the by-laws existed in 1981 when the evidence overwhelmingly proves otherwise; and the Ownership Reports that he submitted on behalf of BTW grossly distorted the true composition of the permittee corporation.

Issue (c) - Section 73.3613(b) Violations

119. Section 73.3613 of the Commission's Rules states, in pertinent part, that each licensee or permittee of a noncommercial TV station shall file with the Commission copies of the following contracts, instruments, and documents, together with amendments, supplements, and cancellations within 30 days of execution thereof;

> (b) Ownership or control: Contracts, instruments or documents relating to the present or future ownership or control of the licensee or permittee or of the licensee's or permittee's stock, rights or interests therein, or relating to changes in such ownership or control shall include but are not limited to the following:
>
> (1) Articles of partnership, association, and incorporation, and changes in such instruments;
>
> (2) Bylaws, and any instruments effecting changes in such bylaws;

120. The record reflects that BTW failed to timely file its organizational documents and amendments thereto with the Commission. BTW did not timely file its Articles of Incorporation or its June 1987 amendment to the Articles. Also, Wade was required but failed to file documents relating to Harold Rick's possible future interest in BTW's FCC authorization. Accordingly, it must be concluded that BTW repeatedly violated Section 73.3613(b) of the Rules which requires such documents to be filed with the Commission within 30 days of their execution.

ULTIMATE CONCLUSIONS

121. The ultimate issues (Issues (d) and (e)) calls for a determination whether any of the persons or groups named in the preceding evidentiary issues possess the requisite qualifications to be or remain a permittee of the captioned television station. The record requires the determination that none of the persons or groups possess such qualifications. The record also compels the conclusion that the construction permit must be revoked.

122. More than a decade ago, BTW applied for authorization to construction of a noncommercial educational station on Channel 68 in Los Angeles. Its ostensible purpose was to place on the air a minority owned and operated television facility which would serve the interests of the various minority communities in the Los Angeles area, primarily the African-American community. Booker Wade, who conceived of the idea to file the application for Channel 68, had a different vision in mind. His purpose in filing the application, unbeknown to the directors he had selected, was to establish a for-profit production company which would sell programming to BTW's station as well as the other stations in his planned low-power television network.

123. As reflected in the record, notwithstanding that BTW's application stated that control would be exercised by its directors, Wade intended from the outset to keep the reins of control in his hands. Once the first hurdle had been overcome with the grant of the construction permit, Wade systematically eliminated the persons who were authorized by the Commission to exercise control of BTW until only Ware, his sister, remained.

124. It is manifestly clear that, with the exception of Ware, the individuals who claim now to control BTW -- Booker Wade, Gwendolyn May, and Hope Smith -- have never had their qualifications passed upon by the Commission and are now holding themselves out as directors without any legitimate authority. It is also indisputable that the only persons who ever had any right to control the affairs of BTW are the original eight members of BTW's board of

directors. It is they who constitute BTW; not Wade nor any of the individuals whom he may have named to replace the legally constituted board.

125. The record reflects that control has been exercised by Wade, a person not authorized to do so, in violation of Section 310(d) of the Act. Also, numerous misrepresentations have been made to the Commission and the provisions of Section 73.3613(b) have been violated. Although Wade bears chief blame for these transgressions, the original eight directors are also culpable.

126. Wade's usurpation of control over BTW's affairs was not inevitable. The directors were empowered with the means to quash Wade's personal ambitions. Their failure to do so cannot be condoned. Wade was neither an officer or director of BTW. As BTW's attorney, he served at the board's pleasure. His services could have been terminated for his refusal to do the Board's bidding. His assumption of control is attributable to the Board's abdication of its responsibility to control BTW.

127. None of the directors are blameless. All bear responsibility for the misfortunes that beset the permittee corporation. Some walked away from BTW rather than challenge Wade. Others assisted him in removing directors who posed a threat to Wade's gameplan. Pate and Duncan never sought to regain their seats on BTW's board despite the absence of any by-laws containing explicit terms of office. Payne resigned. Also, Wilson and Campanella ultimately resigned from the board, albeit under pressure. Cordell, who has never formally resigned, has been inactive in the corporation since 1983. Woodfork and Wade were instrumental to Wade's successful removal of Wade's perceived enemies. Woodfork remained loyal to Wade and oblivious to his manipulation of her until late 1986, and Ware never deviated from her role as Wade's pawn.

128. On the basis of this record, revocation of BTW's authorization is mandated. BTW squandered an opportunity to serve the public interest. The Presiding Judge agrees with the Bureau that it would serve no useful purpose at this late date to reconstitute a corporation whose directors were unable to exercise the control with which they had been vested.

129. Woodfork urges that she is the only qualified principal of the permittee corporation and that the permit should be awarded to her. She posits this contention on two grounds. First, she contends that her actions assisting Wade in his gaining control of BTW was the result of naivete, ignorance, and a too trusting nature. Second, she asserts that her actions following her realization in late 1986 that Wade was acting improperly make up for her earlier failings.

130. Woodfork's argument is not persuasive. Woodfork's assertion tht she was naive and should not, therefore, be held accountable for Wade's misconduct is difficult to reconcile with her impressive background prior to becoming a BTW director detailed in note 6 of the findings. The decisive steps which she took following her visit to BTW's office in late 1986 also belies a claim that she was naive and inexperienced. Had she shown the same zeal earlier, when confronted with the many warning signs of Wade's increasing domination of BTW's affairs, BTW's history may have been far different. In this connection, Woodfork's change of heart came long after her helping Wade to eliminate the persons who were in the best position to steer BTW away from the course mapped out by Wade. Thus, following the election at the March 10, 1984 meeting of Young and Campanella as directors, Woodfork, who admits she was then under the control of Wade, voted to void their elections and also to remove Wilson as chairman and director. In addition, at a further meeting of BTW's Board in September-October 1984, despite Wilson's and Young's pleas that Wilson's chairmanship had been taken away from him wrongly and that Wade was assuming control of BTW, Woodfork, along with Ware, refused to hold another election. At that point, Wilson gave up his efforts to rejoin the Board and severed his ties with BTW because it was obvious to him that Ware and Woodfork were controlled by Wade and that without opening up the Board to other members, Wilson would be outvoted by them.

131. In sum, Woodfork was a key player in helping Wade consolidate his control of BTW. Unlike other directors who were guilty of failing to act, Woodfork was a participant in Wade's scheme. While her later actions are commendable, they do not explain or excuse her earlier behavior. Woodfork, like the other original directors, breached her responsibilities to the corporation by not exercising the authority with which she had been vested. There is no justifiction for entrusting the construction permit to Woodfork and the relief requested by her is rejected.

Accordingly, IT IS ORDERED, That unless an appeal from this Initial Decision is taken by a party, or it is reviewed by the Commission on its own motion in accordance with Section 1.276 of the Rules,[26] the construction permit for Noncommercial Educational Station KEEF-TV, Los Angeles, California, held by Black Television Workshop of Los Angeles, Inc. IS REVOKED, and the captioned applications ARE DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Joseph Chachkin
Administrative Law Judge

[26] In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Section 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-277

In the Matter of

Amendment of Section 73.202(b), RM-8112
Table of Allotments,
FM Broadcast Stations.
(Broken Bow, Oklahoma)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 4, 1992; Released: December 1, 1992

Comment Date: January 21, 1993
Reply Comment Date: February 5, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by CarePhil Communications ("petitioner"), requesting the substitution of Channel 291C2 for Channel 291C3 at Broken Bow, Oklahoma, and the modification of Station KKBI-FM's license accordingly. Petitioner states that it will apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the substitution of Channel 291C2 for Channel 291C3 at Broken Bow since it could enable Station KKBI-FM to expand its coverage area. Channel 291C2 can be allotted to Broken Bow in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.8 kilometers (15.4 miles) north to accommodate petitioner's desired transmitter site.[1] As requested, we also propose to modify Station KKBI-FM's license to specify operation on the higher class channel. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 291C2 at Broken Bow or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Broken Bow, Oklahoma	291C3	291C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **January 21, 1993,** and reply comments on or before **February 5, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Vincent J. Curtis, Jr., Esq.
Fletcher, Heald and Hildreth
1225 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 291C2 at Broken Bow are North Latitude 34-14-45 and West Longitude 94-46-58.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-276

In the Matter of

Amendment of Section 73.202(b), RM-8113
Table of Allotments,
FM Broadcast Stations.
(Arvin, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 4, 1992; Released: December 1, 1992

Comment Date: January 21, 1993
Reply Comment Date: February 5, 1993

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Farmworkers Communications, Inc. ("petitioner") requesting the allotment of FM Channel 223A to Arvin, California, as that community's first local aural transmission service. Petitioner stated its willingness to apply for the channel, if allotted.

2. A staff engineering review of the proposal reveals that Channel 223A can be allotted to Arvin consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, provided the transmitter is located at least 11.0 kilometers (6.8 miles) east of the community.[1]

3. We believe the public interest would be served by proposing the allotment of Channel 223A to Arvin, California, since an interest has been expressed in providing that community with its first local aural transmission service. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, to include Arvin, California, as follows:

	Channel No.	
City	Present	Proposed
Arvin, California	--	223A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **January 21, 1993,** and reply comments on or before **February 5, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Anne Thomas Paxson, Esq.
Borsari & Paxson
2033 M Street, N.W.
Suite 630
Washington, D.C. 20036

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] Coordinates used for Channel 223A are 35-12-56 and 118-42-22. The site restriction is required to avoid a short spacing to the licensed site of Station KIWI(FM), Channel 221A, Bakersfield, California, at coordinates 35-22-08 and 119-00-14, as well as to the licensed site of Station KDDB(FM), Channel 223B, Paso Robles, California, at coordinates 35-21-37 and 120-39-17.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-278

In the Matter of

Amendment of Section 73.202(b), RM-8115
Table of Allotments,
FM Broadcast Stations.
(Harlem, Georgia)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 5, 1992; Released: December 1, 1992

Comment Date: January 21, 1993
Reply Comment Date: February 5, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by GMR Broadcasting, Inc. ("petitioner") requesting the substitution of Channel 236C3 for Channel 236A at Harlem, Georgia, and the modification of Station WHEY(FM)'s construction permit to specify operation on the higher class channel.

2. We believe the public interest would be served by proposing the substitution of Channel 236C3 for Channel 236A at Harlem since it could provide the community with a wide coverage area FM service. Channel 236C3 can be allotted at Harlem in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.3 kilometers (8.3 miles) northwest,[1] in order to avoid a short-spacing to a construction permit for Station WMKO(FM), Channel 235C3, Millen, Georgia. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 236C3 at Harlem or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

3. Accordingly, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Harlem, Georgia	236A	236C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **January 21, 1993,** and reply comments on or before **February 5, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Dan J. Alpert
1250 Connecticut Avenue, N.W.
Suite 700
Washington, D.C. 20036
(Counsel for GMR Broadcasting, Inc.)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 236C3 at Harlem are North Latitude 33-29-22 and West Longitude 82-25-28.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-279

In the Matter of

Amendment of Section 73.202(b), RM-8111
Table of Allotments,
FM Broadcast Stations.
(Hempstead, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 9, 1992; Released: December 1, 1992

Comment Date: January 21, 1993
Reply Comment Date: February 5, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Farmers Communications ("petitioner"), permittee of Channel 287A, Hempstead, Texas, requesting the substitution of Channel 287C3 for Channel 287A at Hempstead and modification of petitioner's authorization to specify operation on the higher powered channel. Petitioner states that it will apply for Channel 287C3, if allotted.

2. We believe the public interest would be served by proposing the substitution of Channel 287C3 for Channel 287A at Hempstead, since it could provide the community with a wide coverage area FM service. Channel 287C3 can be allotted to Hempstead in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.3 kilometers (11.3 miles) north to accommodate petitioner's desired site.[1] As requested, we also propose to modify petitioner's authorization for Channel 287A at Hempstead to specify operation on Channel 287C3. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Hempstead or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Hempstead, Texas	287A	287C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **January 21, 1993,** and reply comments on or before **February 5, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Shaun A. Maher, Esq.
Blair, Joyce & Silva
1825 K Street, N.W.
Suite 510
Washington, D.C. 20006
(Counsel for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] The coordinates for Channel 287C3 at Hempstead are North Latitude 30-15-39 and West Longitude 96-05-29.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-128

In the Matter of

Amendment of Section 73.202(b), RM-8002
Table of Allotments,
FM Broadcast Stations.
(South Hill and
Lawrenceville, Virginia)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 12, 1992; Released: December 1, 1992

By the Chief, Allocations Branch:

1. At the request of Old Belt Broadcasting Corporation ("petitioner"), licensee of Station WSHV-FM, South Hill, Virginia, the Commission has before it the *Notice of Proposed Rule Making and Order to Show Cause*, 7 FCC Rcd 3942 (1992), proposing the exchange of channels between Station WSHV-FM, Channel 288A, South Hill, Virginia, and Station WHFD-FM, Channel 255A, Lawrenceville, Virginia, and the modification of authorizations of both stations. In order to accommodate the proposed channel exchange, an *Order to Show Cause* was issued to William Carlton Link ("Link"), permittee of Station WHFD-FM, Channel 255A, Lawrenceville, Virginia. Petitioner filed comments reiterating its intention to apply for Channel 255A at South Hill and also to reimburse Link for the reasonable costs associated with the change in channel at Lawrenceville, Virginia. Link filed comments supporting the proposed channel change. No other comments were received.

2. We believe the public interest would be served by the exchange of channels between Station WSHV-FM, South Hill, and Station WHFD-FM, Lawrenceville, Virginia, since it could provide both communities with an improved FM service. Channel 255A can be allotted to South Hill, Virginia, and Channel 288A can be allotted to Lawrenceville, Virginia, in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter sites specified in Station WSHV-FM's and Station WHFD-FM's authorizations, respectively.[1] As requested, we will also modify Station WSHV-FM and Station WHFD-FM's authorizations to specify operation on Channel 255A and Channel 288A, respectively.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **January 15, 1993**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
South Hill, Virginia	255A
Lawrenceville, Virginia	288A

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Old Belt Broadcasting Corporation, for Station WSHV-FM, South Hill, Virginia, IS MODIFIED to specify operation on Channel 255A, in lieu of Channel 288A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of William Carlton Link, for Station WHFD-FM, Lawrenceville, Virginia, IS MODIFIED to specify operation on Channel 288A in lieu of Channel 255A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station WHFD-FM's construction permit, BPH-910607JI, except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with construction permit BPH-910607JI, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

6. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the permittee of Station WHFD-FM, as follows: William Carlton Link, Route 1, Box 16, Highway 58 East, Lawrenceville, Virginia 23868.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

[1] The coordinates for Channel 255A at South Hill are North Latitude 36-44-39 and West Longitude 78-09-42. The coordinates for Channel 288A at Lawrenceville are North Latitude 36-45-10 and West Longitude 77-51-49.

8. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-280

In the Matter of

Amendment of Section 73.202(b), RM-8120
Table of Allotments,
FM Broadcast Stations.
(McAlester, Oklahoma)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 12, 1992; Released: December 1, 1992

Comment Date: January 21, 1993
Reply Comment Date: February 5, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Trayne Communications, Inc. ("petitioner"), requesting the substitution of Channel 286A for Channel 285A at McAlester, Oklahoma, and the modification of Station KTMC-FM's license to specify operation on the alternate Class A channel. Petitioner states that it will apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the substitution of Channel 286A for Channel 285A at McAlester, since it could enable Station KTMC-FM to increase its power from its present 3 kW to full Class A power of 6 kW. Channel 286A can be allotted to McAlester in compliance with the Commission's minimum distance separation requirements at the station's presently licensed transmitter site.[1]

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
McAlester, Oklahoma	267C1, 285A	267C1, 286A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **January 21, 1993**, and reply comments on or before **February 5, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Thomas H. Payne, President and General Manager
Trayne Communications, Inc.
P.O. Box 848
McAlester, Oklahoma 74502
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 286A at McAlester are North Latitude 34-58-08 and West Longitude 95-46-21.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-281

In the Matter of

Amendment of Section 73.202(b), RM-8118
Table of Allotments,
FM Broadcast Stations.
(Columbia Falls, Montana)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 16, 1992; Released: December 1, 1992

Comment Date: January 21, 1993
Reply Comment Date: February 5, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Frank Copsidas, Jr. ("petitioner"), requesting the substitution of Channel 240C2 for Channel 240A at Columbia Falls, Montana. Petitioner also requests modification of his construction permit (BPH-911122MC) for Channel 240A to specify operation on Channel 240C2. Petitioner provided an engineering study in support of the petition and indicated he would file an application for the channel, if allotted.

2. We believe petitioner's proposal warrants consideration. Channel 240C2 can be allotted to Columbia Falls, Montana, consistent with the Commission's spacing requirements at petitioner's specified site.[1] Since Columbia Falls is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for this allotment. We shall also propose to modify petitioner's construction permit for Channel 240A to specify operation on Channel 240C2 in lieu of Channel 240A. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the use of the higher powered channel at Columbia Falls or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such interested party.

3. In view of the above, the Commission believes it is in the public interest to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Columbia Falls, Montana	240A	240C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **January 21, 1993**, and reply comments on or before **February 5, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Dan J. Alpert
1250 Connecticut Avenue, N.W.
Suite 700
Washington, D. C. 20036

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 240C2 at Columbia Falls are 48-27-35 and 114-20-25.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-282

In the Matter of

Amendment of Section 73.202(b), RM-8080
Table of Allotments,
FM Broadcast Stations.
(Marco, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 17, 1992; Released: December 1, 1992

Comment Date: January 21, 1993
Reply Comment Date: February 5, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by The University of South Florida ("petitioner") requesting the allotment of Channel 255A to Marco, Florida, and its reservation for noncommercial use. Petitioner states its intention to apply for the channel, if allotted.

2. Generally, noncommercial educational stations operate within the reserved portion of the FM band (Channels 201-220). However, exceptions have been made where channels in the noncommercial educational band are not available because of foreign allotments (Canadian or Mexican) or potential interference to operation on VHF Television Channel 6. According to petitioner, there are no noncommercial educational channels available for use at Marco. Petitioner notes that Marco is served by three commercial FM stations and one commercial AM station.[1]

3. We believe the public interest would be served by proposing to allot Channel *255A to Marco, Florida, and to reserve the channel for noncommercial educational use. An engineering analysis has confirmed that Channel *255A can be allotted to Marco in compliance with the Commission's minimum distance separation requirements with a site restriction 14 kilometers (8.7 miles) northeast of the community.[2]

4. Accordingly, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Marco, Florida	--	*255A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **January 21, 1993**, and reply comments on or before **February 5, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Wayne Coy, Jr.
Cohn and Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, D.C. 20036
(Attorney for The University of South Florida)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] Currently there are two FM stations and an AM station licensed to Marco which are on the air. The other FM station is currently off-the-air.

[2] The coordinates for Channel *255A are North Latitude 25-59-57 and West Longitude 81-38-38.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-163

In the Matter of

Amendment of Section 73.202(b), RM-8037
Table of Allotments,
FM Broadcast Stations.
(Clinton, Missouri)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 19, 1992; Released: November 30, 1992

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 7 FCC Rcd 5111 (1992), issued in response to a petition filed by Clinton Radio Co. ("petitioner"), proposing the substitution of Channel 237C3 for Channel 237A at Clinton, Missouri. Petitioner also requested modification of its license for Station KDKD(FM), Channel 237A, to specify operation on Channel 237C3. Petitioner filed supporting comments in which it reaffirmed its interest in the channel at Clinton. No other comments were received.

2. We believe the public interest would be served by substitution of Channel 237C3 for Channel 237A at Clinton, Missouri, since it would provide the community with expanded local FM service. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at petitioner specified site 4.4 kilometers (2.7 miles) north of the community.[1] In addition, we have authorized a modification of the license for Station KDKD(FM), Clinton, Missouri, to specify operation on Channel 237C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **January 14, 1993,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Clinton, Missouri	237C3, 241C

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KDKD(FM), Channel 237A, Clinton, Missouri, IS MODIFIED to specify operation on Channel 237C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Clinton Radio Co., licensee of Station KDKD(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 237C3 at Clinton are 38-24-32 and 93-46-50.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-53

In the Matter of

Amendment of Section 73.202(b), RM-6614
Table of Allotments,
FM Broadcast Stations.
(Salem and Sioux Falls,
South Dakota)

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: October 19, 1992; Released: November 30, 1992

By the Chief, Policy and Rules Division:

1. The Commission has before it an Application for Review ("Application") filed by Sioux Falls College ("College"), licensee of non-commercial, educational FM ("NCE-FM") Station KCFS, Channel 261A (100.1 MHz), Sioux Falls, South Dakota, of the *Memorandum Opinion and Order*, 6 FCC Rcd 5798 (1991) ("*MO&O*") in this proceeding.[1] Big Sioux Broadcasting, Inc., successor permittee of Station KIKN, Channel 263C2 (100.5 MHz) Salem, South Dakota, filed an opposition to the Application. No other responses were filed.

2. The College had been ordered to change the channel of its Station KCFS in order to accommodate an upgrade of the construction permit of Big Sioux Station KIKN.[2] The College protested the change and continues to do so in its Application. However, the College has filed a request to withdraw its Application, stating that the proposed channel change is "no longer objectionable." Pursuant to Commission Rule 1.420(j), the College explains that no consideration was received, paid, or promised for its withdrawal of its Application.[3] We believe that the public interest would be served by granting the College's request.

3. Accordingly, the Application for Review filed by Sioux Falls College IS HEREBY DISMISSED.

4. For further information concerning this proceeding, contact J. Bertron Withers, Jr., (202) 634-6350.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau

[1] The *MO&O* denied the College's petition for reconsideration of the *Report and Order* ("*R&O*") in this proceeding, 5 FCC 1000 (1990).

[2] The *R&O* had ordered the College to substitute Channel 252A (98.3 MHz) for Channel 261A (100.1 MHz) at its Station KCFS in order to accommodate the substitution of Channel 263C1 (100.5 MHz) for Channel 263C2 at Sioux Falls and to modify Station KIKN's construction permit accordingly.

[3] The College's Director of Mass Communications, Mr. Gerry Schlenker, filed a declaration stating that "no consideration" was paid, otherwise received by, or promised the College for the dismissal of its Application. Therefore, we find that the College has demonstrated compliance with §1.420(j) of the Commission's Rules governing payment of consideration in exchange for the withdrawal of requests for reconsideration of or applications for Commission review of allotment proposals.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re

VICTORIA CELLULAR CORPORATION File No. 163500-91-18-ALN

Notice of Apparent Liability for
Forfeiture Penalty for Station KNKA730
in the Domestic Public Cellular Radio
Telecommunications Service serving
Market No. 300A, Victoria, Texas

MEMORANDUM OPINION AND ORDER

Adopted: November 12, 1992; Released: December 1, 1992

By the Commission:

I. INTRODUCTION

1. In this order, we address a request of Victoria Cellular Corporation (Victoria)[1] for reduction of the $15,000 forfeiture we proposed in a Notice of Apparent Liability for Forfeiture (*NALF*). *See Victoria Cellular Corporation*, 6 FCC Rcd 4506 (1991). For the reasons discussed below, we grant in part Victoria's request and reduce the forfeiture to $6,000.

II. BACKGROUND

2. On May 5, 1988, the Commission granted Victoria authority to construct a new cell and increase the power for Station KNKA730. Victoria constructed and commenced operation of the facility within the required period but failed to timely file FCC Form 489 (Notification of Status of Facilities), informing the Commission that the new cell had been placed into operation. Consequently, the authorization expired pursuant to Section 22.9(b)(3) of the Commission's rules.

3. On August 22, 1990, Victoria filed a request for Special Temporary Authority (STA) to continue operation pending Commission action on Victoria's concurrently-filed application for reinstatement of the expired authorization. The STA request was granted September 10, 1990, and Victoria received additional STA grants on December 27, 1990, and March 7, 1991.[2] On July 26, 1991, we released the *NALF*, stating that an apparent violation of Section 22.3 of the Commission's rules had occurred for operating a facility in an unauthorized manner, which constituted willful and continuing conduct within the terms of Section 503(b) of the Communications Act (the Act). We assessed a $15,000 forfeiture.

III. DISCUSSION

4. Victoria in its request admits its violation but argues that the *NALF* violates Section 503 of the Act and the Commission's *Policy Statement, Standards for Assessing Forfeitures*, 7 FCC Rcd 4695 (1991), *recon. denied*, 7 FCC Rcd 5339 (1992), *pet. for review pending sub nom. USTA v. FCC*, No. 92-1321 (D.C. Cir. filed July 30, 1992) (*Policy Statement*) and that the *NALF* is arbitrary and capricious. Victoria also argues that the *NALF* did not describe how the *Policy Statement* was applied to Victoria's set of facts, *i.e.*, the *NALF* failed to specify which forfeiture base amount the Commission used and which upward or downward adjustments were made in relation to the base amount of the violation. It further argues that the Commission failed to consider all forfeiture adjustment criteria established by the *Policy Statement*,[3] namely, the "good faith/voluntary disclosure" downward adjustment factor, because Victoria voluntarily disclosed its rule violation to the Commission.

5. Victoria further contends that the $15,000 forfeiture is inconsistent with Commission precedent, is exorbitant when compared with Victoria's limited revenues and cannot be explained when viewed against other forfeitures imposed for failures to notify under Part 22 of the Commission's rules.[4] Additionally, Victoria asserts that the forfeiture is disproportionately large for Victoria when compared with the cellular industry as a whole.[5] It also argues that the *NALF* seeks to impose a forfeiture on conduct partially occurring beyond the one-year statute-of-limitations period.

6. We reject Victoria's arguments that the *NALF* violates Section 503 of the Act and that it is arbitrary and capricious. In 1989, Congress amended the Act to increase substantially the maximum amounts of forfeitures that may be imposed under Section 503(b) and other sections of the Act.[6] The 1989 changes in our forfeiture authority placed licensees on notice that violators of the Act or our rules could be subject to substantially higher forfeitures. As Victoria correctly points out, the *NALF* was issued shortly before the *Policy Statement* was released and became effective.[7] Accordingly, we did not apply the *Policy Statement*. We recognize that the eight forfeiture cases cited by Victoria (*see supra*, note 4) were issued after Section 503(b) was amended but which still imposed forfeitures similar to those forfeitures imposed before the new statutory increases became effective. The Victoria *NALF* was the first proposed forfeiture for violation of Part 22 of our rules, 47 C.F.R. Sec. 22.0, *et seq.*, whereby we used our increased forfeiture authority. In light of the higher congressionally-approved amounts in effect at the time of the *NALF*, we exercised our authority to impose higher forfeitures. Although the *NALF* does not describe how the forfeiture was calculated, the forfeiture imposed in Victoria's *NALF* is generally consistent with the *Policy Statement* that subsequently became applicable (*see supra*, note 3), which includes a base amount for failure to file required information of $30,000 for common carriers, and which also includes a downward adjustment factor for minor violations. Moreover, as the Commission recently emphasized, the base forfeiture amounts and the adjustment factors set forth in the *Policy Statement* are not intended to be followed in a formulaic manner. *See* 7 FCC Rcd 5339 (1992).

7. Contrary to Victoria's argument, the *NALF* does not impose a forfeiture on conduct occurring beyond the one-year statute-of-limitations period. Victoria's failure-to-file violation continued up to August 22, 1990, which was

within the one-year period of the statute. Victoria's assertion that all but the last 27 days fall outside of the one-year statute of limitations period is irrelevant because the forfeiture assessed was not based on any "counting the days." *See generally Policy Statement* (forfeiture determined by base amount which can be adjusted upward by varying percentage for repeated violations). For statute-of-limitation purposes in assessing a proposed forfeiture, however, there can be no dispute that Victoria repeated its violation for "at least 27 days."

8. Regarding Victoria's asserted inability to pay a $15,000 forfeiture, we find unpersuasive Victoria's comparison of the first-quarter 1991 gross revenues of the 12 cellular carriers in relation to Victoria's confidentially submitted first-quarter 1991 gross revenue figure (*see supra*, note 5). Based upon our review of Victoria's redacted financial data, we find that a $15,000 forfeiture is not at all excessive when viewed against Victoria's three-month revenue figure. *See PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992). Consistent with *PJB*, we have assured ourselves that there is no basis for Victoria's inability-to-pay argument.[8]

9. As to Victoria's argument that it brought this violation to our attention, we do find, however, that the record supports Victoria's statement that it voluntarily informed the Commission of its violation and that the *NALF* should have taken this fact into consideration. Victoria's August 22, 1990, STA request accompanied by a August 20, 1990, letter signed by Victoria's President, Richard Bawab. The letter contained, among other things, two related statements: (1) "This [STA request] is in confirmation of the telephonic information which Victoria . . . provided to the Commission on August 17, 1990", and (2) "Victoria . . . on August 17, 1990, voluntarily advised the Commission that it had discovered [the violation] . . . ."

10. Accordingly, we find that Victoria voluntarily disclosed the violation to the MSD. Consequently, we will utilize a downward-adjustment basis for lowering the forfeiture in light of Victoria's voluntary disclosure and, thus, reduce the forfeiture to $6,000.

IV. CONCLUSION

11. Victoria has justified reduction of the forfeiture based upon its voluntary disclosure but has not justified reduction on any other grounds. As a result, we reduce the $15,000 forfeiture to $6,000.

V. ORDERING PARAGRAPHS

12. Accordingly, IT IS ORDERED that the Request seeking to reduce the forfeiture in the above-captioned proceeding, filed by Victoria Cellular Corporation, IS GRANTED TO THE EXTENT INDICATED ABOVE and IS DENIED in all other aspects.

13. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, 47 U.S.C. Sec. 503(b), and Section 1.80(f)(4) of the Commission's rules, 47 C.F.R. Sec. 1.80(f)(4), that Victoria Cellular Corporation SHALL FORFEIT to the United States the sum of six thousand dollars ($6,000), for willful and repeated violations of Section 22.3 of the Commission's rules. Payment of the forfeiture may be made by mailing a check or similar instrument to the Commission, payable to the order of the Federal Communications Commission, within thirty (30) days from the date of this Order, to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

14. IT IS FURTHER ORDERED that if said forfeiture is not paid within the period specified, the case will be referred to the Department of Justice for collection pursuant to Section 504(a) of the Communications Act of 1934, 47 U.S.C. Sec. 504(a).

15. IT IS FURTHER ORDERED that a copy of this Order BE SENT to Victoria Cellular Corporation by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Response of Victoria to Notice of Apparent Liability for Forfeiture (Redacted to Omit Confidential Financial Information) filed September 5, 1991.

[2] Victoria's application for reinstatement was granted June 18, 1991. *See* File No. 06469-CL-L-90, covering File No. 00771-CL-MP-88.

[3] Victoria states that based on informal discussions with the Commission's Mobile Services Division (MSD), the $15,000 amount was based on several factors contained in the *Policy Statement*. (1) The base amount of $30,000 is applicable to common carriers for a failure to file required forms or information. (2) Because failure-to-file FCC Form 489 for completion of construction may be viewed as a minor violation, the base amount was reduced fifty percent. (3) Because the Commission lacked specific information as to Victoria's financial condition, it could not consider ability to pay the forfeiture as a mitigating factor. The *NALF* did not reference the *Policy Statement* because the *NALF* was released prior to the *Policy Statement*.

[4] Victoria lists eight non-cellular Part 22 cases for which NALFs were issued in 1990 and 1991 which were released prior to issuance of the *Policy Statement* and, for each case, Victoria indicates the number of days' duration of the violation, the number of sites involved, and the amount of the forfeiture. Victoria then presents for each of the eight cases the amount Victoria derived as the dollar amount per day per site.

[5] Victoria compares first-quarter 1991 gross revenues of 12 cellular carriers as a whole which, Victoria states, was obtained from "Cellular Communications Industry", Donaldson, Lufkin & Jenrette (Spring 1991), with Victoria's first-quarter 1991 gross revenues. (Victoria does not give a reason for choosing the 12 particular carriers shown in its comparison.) Victoria says the 12 carriers' average gross revenue is $90,020,000 (ranging from $208,900,000 to $7,700,000), with $15,000 representing only 0.0167 percent of their revenue, but that Victoria's forfeiture is much more burdensome to it than to any of the 12 cellular carriers. While redacting its own figures, Victoria says an equivalent computation would require its forfeiture be reduced to less than $100. (Victoria requests confidential treatment for its own financial data submitted in its Response.)

[6] Pub. L. No. 239, 101st Cong., 1st Sess., 103 Stat. 2131 (signed into law Dec. 19, 1989). We amended Section 1.80 of the rules to reflect the Section 503(b) increases. *Amendment of Section 1. 80 of the Commission's Rules to Modify Forfeiture Amounts*, 5 FCC Rcd 3708 (1990).

[7] The *Policy Statement* was adopted July 11, 1991, and released August 1, 1991. The NALF was adopted July 17, 1991, and released July 26, 1991.

[8] Because Victoria has requested that its financial showing be held confidential (*see supra*, note 5), we are not setting forth its forfeiture-to-gross revenue percentage.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

FLORIDA CELLULAR MOBILE COMMUNICATIONS CORPORATION — File No. 10854-CL-P-A-89

For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market No. 468, Maryland 2 (Kent)

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION.

Adopted: November 12, 1992 **Released: December 1, 1992**

By the Commission:

I. INTRODUCTION

1. In this order, we address a petition for reconsideration filed by Florida Cellular Mobil Communications Corporation (Florida Cellular) in the matter of *Florida Cellular Mobile Communications Corporation*, 6 FCC Rcd 6910 (1991) (*Order*), *aff' g Florida Cellular Mobile Communications Corp.*, 6 FCC Rcd 354 (Mobile Ser. Div. 1991) (*Staff Order*). For the reasons discussed below, we deny Florida Cellular's petition.

II. BACKGROUND

2. On November 22, 1989, Florida Cellular was tentatively selected as the non-wireline winner of a lottery for the Maryland 2 (Kent) RSA. Its application was subsequently dismissed by the Mobile Services Division (MSD) for violating Section 22.921(b)(1) of the Commission's rules, which prohibits an applicant from having an interest in more than one application for the same Rural Service Area (RSA). The MSD found that one of Florida Cellular's shareholders, Yerger C. Yandell (Yandell), was also a partner in Kudzu Cellular Partnership, a mutually exclusive applicant in the Maryland 2 market. At the same time, the MSD also denied Florida Cellular's companion request for waiver of Section 22.922 of the rules to allow it to amend its application. *Staff Order*, *supra*. Thereafter, Florida Cellular requested that the *Staff Order* be reconsidered and its application be reinstated, claiming that the MSD had failed to take into account that the rule violation was the product of inadvertence, that the violation was voluntarily disclosed, and that reinstating Florida Cellular's application would have served the policy objectives of the rules. The Commission denied Florida Cellular's request. We pointed out that Florida Cellular's violation of Section 22.921 was undisputed and that the relief requested necessitated waivers of Section 22.921 as well as Section 22.922.[1] The Commission found that a waiver of either rule was unwarranted. Florida Cellular had failed to demonstrate that enforcement of these rules would not serve their underlying purposes or that the facts and circumstances of the violation rendered enforcement of the two rules inequitable, unduly burdensome, or contrary to the public interest. *Order*, *supra*. Florida Cellular now asks that the Commission reconsider our refusal to reconsider the *Staff Order* and our refusal to reinstate Florida Cellular's application. Florida's petition is opposed by JAJ Cellular Partnership (JAJ), one of its opponents in the earlier proceedings.

III. DISCUSSION

3. In this latest request for reconsideration, Florida Cellular contends that the Commission's action affirming the MSD's decision to dismiss Florida Cellular's application for its still undisputed violation of the cross-ownership rule was based upon flawed legal and factual premises that warrant reversal. In addition, Florida Cellular submits that the Commission's action, if allowed to stand, will make applicants and licensees reluctant to disclose violations voluntarily for fear of disqualification.

4. Florida Cellular argues that neither the staff nor the Commission acknowledged that Florida Cellular voluntarily disclosed its violation of Section 22.921, and that this lack of acknowledgement thereby implied that the violation was brought to light by either JAJ's petition or the MSD staff's own research. This, says Florida Cellular, renders the revocation inconsistent with established Commission policy of mitigating sanctions imposed on a licensee who voluntarily disclosed a violation. Florida Cellular next argues that the Commission failed to uphold the public interest by overlooking allegations that JAJ sought a $5 million payoff for not opposing Florida Cellular's petition for reconsideration of the *Staff Order*. Florida Cellular also asserts that the Commission improperly applied Section 22.921 because we failed to consider the absence of specific intent by Yandell or Florida Cellular to avoid the cross-ownership restriction.

5. Florida Cellular argues that the *Order* conflicts with the analyses of Section 22.921 employed in previous cases. Florida Cellular notes that the only other recent decision in which the Commission applied Section 22.921 is *Progressive Cellular III B - 3* (*Progressive*),[2] but in that case the applicant was a general partnership and the violation of the cross-ownership rule occurred because the second partnership's managing partner, acting in his official capacity, filed a competing application. Florida Cellular asserts that, as a corporation, it was not responsible for the actions of its shareholders. In addition, says Florida Cellular, the persons responsible for the rule violation in *Progressive* jointly held a majority interest and one was the managing partner of the applicant, whereas Florida Cellular's rule violator was an 0.85 percent shareholder who had no indicia of control. Finally, Florida Cellular contends that the Commission in the *Order* did not assert any basis for our attribution of Yandell's ownership to Florida Cellular. This, Florida Cellular concludes, warrants a different result than *Progressive*, which was based on the joint and mutual responsibility of partners for their rule violation. Florida also cites *Telephone and Data Systems, Inc.* (*TDS*), 6 FCC Rcd 270 (Com. Car. Bur. 1991) (application for review pending), in which the Common Carrier Bureau (Bureau) found a violation of Section 22.921 stemming from an applicant's acquisition of interest in competing applications

through a separate, non-applicant corporation in which it held a 49 percent interest, but did not dismiss the application. Florida Cellular contends that the Bureau took this action because revocation would have been inequitable, the action taken by the third party was beyond TDS's control, and there was no indication that TDS had intended unfairly to skew the lottery. Consequently, argues Florida Cellular, under the *TDS* analysis, its application should not have been dismissed. Florida Cellular's final argument is that the Commission failed to give Florida Cellular's request for waiver the "hard look" required by *WAIT Radio v. FCC*.[3] Instead, says Florida Cellular, the Commission refused to consider whether the facts justified a waiver.

6. None of Florida Cellular's arguments is persuasive. It has failed to demonstrate, as alleged, that the decision reached in the *Order* was based on "flawed legal and factual premises". Most of the positions taken by Florida Cellular were previously considered and rejected and the remainder are equally unavailing.

7. Its first argument, that the Commission failed to acknowledge that Florida Cellular voluntarily disclosed its violation of Section 22.921, is patently in error.[4] Likewise, there is no substance to its allegation of an implication that the violation was brought to light through the efforts of either the Commission or JAJ.[5] As the *Order* explained, Florida Cellular's application was dismissed because it violated the Commission's cross-ownership rule and it failed to provide an adequate demonstration that enforcement of the rule should be waived. There is no validity to Florida Cellular's claim that it should not be found in violation of the cross-ownership prohibition because it did not intend to abuse the lottery process. Although deterring speculation is one purpose of Section 22.921, its underlying intent is to assist the Commission in processing applications quickly and efficiently so that service might be available to the public as expeditiously as possible. As the Commission stated in the *Order at 6910, para. 5:*

> A rule such as Section 22.931 could not be efficiently applied if a fact-specific analysis of intent were required . . . .

The Commission's enforcement of the cross-ownership restriction without regard to intent of the violator is neither new nor novel. *See Progressive, supra,* and *MV Cellular, Inc.*, 103 FCC 2d 414, 420 (1986). Also in error is Florida Cellular's assertion that we were compelled by precedent to mitigate the consequences of Florida Cellular's violation because it was voluntarily disclosed. Although the Commission will consider voluntary disclosure as mitigating factor when assessing forfeitures, we have determined that a dismissal, rather than monetary forfeiture, is the appropriate remedy for Florida Cellular's violation of the cross-ownership prohibition. *See Policy Statement, Standards for Assessing Forfeiures*, 6 FCC Rcd 4695 (1991), *on recon.*, FCC 92-212, adopted May 14, 1992. Furthermore, in view of Florida Cellular's failure to exercise due diligence in its attempt to comply with the rule, we do not find that Florida Cellular's subsequent disclosure is sufficient cause to warrant mitigation.

8. Although Florida Cellular did not explicitly request that Section 22.921 be waived, the Commission nevertheless gave Florida Cellular's claim the "hard look" required by *WAIT Radio v. FCC, supra,* and found the asserted basis for waiver insufficient. Florida Cellular's violation of Section 22.921 apparently stemmed from its failure to inform Yandell that it intended to file applications for various RSA lotteries. Our rule requires applicants to avoid cross-ownership interests; it does not exempt those who file multiple applications and fatally err by not diligently tracking their assorted potential cross-interests. Indeed, in this case the record reveals that Florida Cellular reached Yandell when it won the lottery, which suggests that it could have done so earlier to avoid a cross-ownership violation. We need not base our decision on that suggestion, however. The absolute legal prohibition of Section 22.921 against cross-ownership interests explicitly includes indirect interests of less than 1 percent.[6] Nothing in Florida Cellular's petition, including its claim of inadvertence, lends credence to its assertion that it warranted a *sua sponte* waiver, or should have been granted a waiver on reconsideration.[7]

IV. CONCLUSION

9. The issues raised by Florida Cellular in its petition for reconsideration of the *Order* have been fully and carefully examined and no reversible error has been found.

V. ORDERING PARAGRAPH

10. Accordingly, IT IS ORDERED THAT the petition for reconsideration filed by Florida Cellular Mobil Communications Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Section 22.922 prohibits transfers and assignments of RSA applications prior to grant of construction authorization.

[2] *Progressive Cellular III B - 3*, 6 FCC Rcd 7178 (1991), *aff'g* 6 FCC Rcd 596 (Mobile Ser. Div. 1991).

[3] *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

[4] Florida Cellular's disclosure of its rule violation was acknowledged by the Commission. *See Order*, 6 FCC Rcd 6910 at para. 4.

[5] Interestingly, Florida Cellular conveniently overlooks the fact that it was legally bound by Sections 1.65 and 22.923(b)(7) of the rules to disclose Yandell's prohibited, dual interest.

[6] Florida Cellular's reliance on *Progressive* is misplaced. Florida Cellular's corporate purpose was to acquire cellular radio licenses in Metropolitan Statistical Areas. This constitutes notice to all stockholders that other applications for cellular authorizations could be forthcoming. Florida Cellular's registered purpose to file cellular applications, its responsibility to keep its stockholders advised of matters that could lead to violation of Section 22.921, and Yandell's responsibility to comply with Section 22.921 each establish a duty which, with reasonable exercise of diligence, could have avoided violation of Section 22.921 and application dismissal. As to *TDS*, that case, which is currently before the Commission on review, involved a wireline settlement.

[7] Florida Cellular's claim of extortion by JAJ represents a matter unrelated to the issues before us, namely, waiver of Sections 22.921 and 22.922. This should not, however, be interpreted to mean that the Commission is not concerned about "greenmail" petitions. It is currently exploring possible rule changes, not applicable during the time frame at issue here, to prevent parties from filing petitions solely to extract money from an applicant or to delay an applicant and thus force a settlement. *Amendment of Part 22 of the Commission's Rules For Unserved Areas* (Further Notice of Proposed Rule Making), 6 FCC Rcd 6158 (1991).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Liability of Zapis
Communications Corporation

Licensee of Station WAAF(FM)
Worcester, Massachusetts

For a Forfeiture

MEMORANDUM OPINION AND ORDER

Adopted: November 23, 1992 Released: December 1, 1992

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief of the Mass Media Bureau, acting pursuant to authority delegated by Section 0.283 of the Commission's Rules, has under consideration: (1) a Notice of Apparent Liability (NAL), issued on August 17, 1992, for five thousand dollars ($5,000) against Zapis Communications Corporation, ("Zapis"), licensee of Station WAAF(FM), Worcester, Massachusetts; and, (2) a response to the NAL filed September 21, 1992, and a supplement to the response filed September 28, 1992, requesting rescission of the forfeiture.

2. The NAL was issued to Zapis Communications Corporation, for its apparent willful violation of Section 73.1206 of the Commission's Rules. The Commission determined that the licensee of Station WAAF(FM) broadcast a telephone conversation on June 1, 1992, without first having informed the other party of the intended broadcast use of the conversation.

3. First, Zapis contended that the NAL should be rescinded because its employee violated station procedures when she aired the telephone conversation without the other party first having been informed of its intended broadcast use. Second, Zapis argued that the employee thought her actions were permissible because another station had acted in a similar manner for years.

4. Third, Zapis contended that the Commission itself implied that there would be no forfeiture for its actions. Zapis compared its situation to the *Notice of Apparent Liability to Sound Broadcasting Corporation (KCNA)(FM), Cave Junction, Oregon (MMB)*, 7 FCC Rcd 3378 (1992), which also involved a Section 73.1206 violation. Zapis explained that the Bureau issued a $2,000 NAL to Station KCNA(FM), and stated that it would not rescind the fine in favor of an admonishment because a station employee misrepresented facts about the violation, as well as the licensee's lack of cooperation in responding to the Commission. In contrast, Zapis asserted that it has been truthful and fully cooperative with the Commission's investigation. Therefore, Zapis contended that it should receive an admonition instead of the forfeiture. Fourth, Zapis asserted that its overall compliance record with the Commission's rules, regulations and policies with respect to Stations WAAF(FM), Worcester, Massachusetts, as well as WZAK(FM), Cleveland, Ohio, and WVEI(AM) Worcester, Massachusetts, which are also licensed to Zapis, warrants a rescission of the forfeiture.

5. We disagree with three of Zapis' four arguments. First, while Zapis argues that the employee's actions violated its station's policies, it is well established that an employer remains responsible for the actions of its employees. *Empire Broadcasting Corp.*, 25 FCC 2d 68 (1970). Second, neither ignorance of our Rules nor another licensee's misconduct excuses the violation.

6. Third, we disagree with Zapis that the Bureau would have given an admonition to the licensee of KCNA(FM), instead of the $2,000 forfeiture, absent the aggravating circumstances discussed above. In the KCNA(FM) case, the Bureau stated that "[t]he Commission has issued forfeitures in a number of recent instances, even where the licensee acknowledged upon Commission inquiry, a Section 73.1206 violation.[1] This statement demonstrates Commission support for issuing a forfeiture to KCNA(FM) even absent the aggravating circumstances described above.

7. Moreover, the Bureau issued a $2,000 forfeiture to KCNA, which was the highest amount allowed by law at the time its violation occurred in 1989. In contrast, we issued a $5,000 forfeiture to Zapis, which was not the highest amount allowed under existing law but merely a suggested amount under our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *on recon.*, 7 FCC Rcd 5339 (1992), *pet . for review pending sub nom. USTA v. FCC*, No. 92-1321 (D.C. Cir. filed July 30, 1992). We are, in fact, authorized under Section 503(b)(2)(A) of the Communications Act of 1934, as amended, to issue a $25,000 forfeiture for a single violation.

8. Nevertheless, we agree with Zapis' request for a reduction of the forfeiture based on its history of overall compliance with the Commission's Rules under the "downward adjustment criteria" set forth in the Commission's August 1, 1991, *Policy Statement* on new standards for assessing forfeitures. A review of the past history of Stations WAAF(FM), Worcester, Massachusetts, WZAK(FM), Cleveland, Ohio, and WVEI(AM) Worcester, Massachusetts, reveals a record of compliance. For this reason, the Bureau will reduce the forfeiture to $4,000.

9. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, IT IS ORDERED, that Zapis Communications Corporation, Worcester, Massachusetts, FORFEIT to the United States the sum of four thousand dollars ($4,000) for its willful violation of Section 73.1206 of the Commission's Rules. The payment should be in the form of a check or similar instrument, payable to the Federal Communications Commission. In regard to this forfeiture proceeding, the licensee may take any of the actions set forth in Section 1.80 of the Commission's Rules, as summarized in the attachment to this Memorandum Opinion and Order.

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[1] . *See e.g., Notice of Apparent Liability to Cook Inlet Radio KSLX(FM)*, Scottsdale, Arizona, (MMB), dated October 15, 1991; *Notice of Apparent Liability to Montachusett Broadcasting WSLO-(FM), Fitchburg, Massachusetts, (MMB)*, dated October 15, 1991; *Notice of Apparent Liability to The Hearst Corporation WISN(AM), Milwaukee, (MMB)*, dated November 6, 1990.

FEDERAL COMMUNICATIONS COMMISSION

Roy Stewart, Chief
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 85-166

In the Matter of

Investigation of Special Access
Tariffs of Local Exchange Carriers — Phase II, Part 1

ORDER

Adopted: November 17, 1992; Released: December 1, 1992

By the Commission:

1. In 1988, the Commission issued the *Strategic Pricing Order* which contained guidelines to determine whether certain strategically priced special access rates that were in effect during the period from April 1985 to March 1989 were just and reasonable.[1] In the subsequent *Refund Order*, the Commission found that certain special access earnings reported by the LECs failed to meet the Commission's first guideline - that carriers not exceed the maximum allowable rate of return on special access. These rates were subsequently deemed unjust and unreasonable.[2] The Commission then ordered carriers whose rates exceeded the maximum allowable rate of return to refund the overcharges. It also directed carriers to place funds to cover the amount of their liability in an escrow account and to file refund plans identifying refund amounts and eligible recipients. Finally, it delegated authority to order final refund disbursement to the Common Carrier Bureau (Bureau).[3]

2. In response to the *Refund Order*, carriers filed refund plans and established escrow accounts. Some carriers, however, withheld from these accounts the amounts they had already paid to certain customers in settlement of complaints concerning strategic pricing. In addition, on February 21, 1990, the Ameritech Operating Companies filed a request for stay of the escrow and refund requirements. The Bureau subsequently issued its *Escrow Order*, which required noncomplying carriers to deposit their full refund liability as described in the *Refund Order* into escrow accounts pending full resolution of the issue of treatment of the settlement amounts.[4] On April 11, 1990, US West Communications, Inc. (US West) filed an application for review of the *Escrow Order* claiming: (1) that private settlements extinguished its liability to those particular customers it settled with and that it should be allowed to withdraw funds that pertained to those settlements; and (2) that certain services for which refunds were required had not been strategically priced. On May 2, 1990, Pacific Bell Telephone Company and Southwestern Bell Telephone Company filed petitions for reconsideration of this order on the same ground as US West's first claim described above. On July 30, 1990, Southwestern Bell filed a motion to expedite a ruling on its petition for reconsideration of the *Refund Order*.

3. The Bureau's *Reimbursement Order* later allowed most carriers submitting refund plans under the terms of the *Refund Order* to withdraw amounts relating to private settlements.[5] It further ordered these carriers to disburse refunds to non-settling parties within 30 days, except that carriers participating in pending appeals could keep amounts attributable to non-settling party refunds in escrow pending Commission action on requests for stay pending appear.[6] On January 31, 1991, Telephone Communications Corporation filed a request for reconsideration of the *Reimbursement Order*, asserting that US West's refund plan did not comply with Commission guidelines.

4. On November 21, 1991, the United States Court of Appeals for the Sixth Circuit vacated the *Refund Order*, without remand, finding it inconsistent with Commission policies establishing permissible rate of return.[7] In light of the Court's decision, pending requests for reconsideration, review, and stay of the Orders associated with implementation of the vacated *Refund Order* are moot. As such, these pleadings are dismissed. In view of the Court's Order and mandate we are also terminating the strategic pricing investigation and vacating requirements imposed by the Bureau's *Escrow Order* and *Reimbursement Order*. Any funds remaining in escrow should be disbursed to the appropriate local carrier.

5. IT IS ORDERED that the Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase II, Part 1, 5 FCC Rcd 2506 (Com.Car.Bur.1990) (*Escrow Order*) IS VACATED.

6. IT IS FURTHER ORDERED that the Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase II, Part 1, 6 FCC Rcd 36 (Com.Car.Bur.1990) (*Reimbursement Order*) IS VACATED.

7. IT IS FURTHER ORDERED that the petition for partial reconsideration of the *Reimbursement Order* filed by Telephone Communications Corporation, Inc., IS DISMISSED.

8. IT IS FURTHER ORDERED that the petitions for reconsideration of the *Escrow Order* filed by Pacific Bell Telephone Company and Southwestern Bell Telephone Company and the application for review of the *Escrow Order* filed by US West Communications, Inc. ARE DISMISSED.

9. IT IS FURTHER ORDERED that the motion to expedite ruling filed by Southwestern Bell Telephone Company IS DISMISSED.

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[1] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase II, Part 1, 4 FCC Rcd 4797 (1988) (*Strategic Pricing Order*), *modified on recon.* 5 FCC Rcd 4861 (1990).

[2] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket NO. 85-166, Phase II, Part 1, 5 FCC Rcd 412 (1990) (*Refund Order*).

[3] *Refund Order*, 5 FCC Rcd at 413.

[4] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase II, Part 1, 5 FCC Rcd 2506 (Com.Car.Bur.1990) (*Escrow Order*).

[5] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase II, Part 1, 6 FCC Rcd 36 (Com.Car.Bur.1990) (*Reimbursement Order*).

[6] *Reimbursement Order*, 6 FCC Rcd at 39.

[7] Ohio Bell Telephone Co. v. FCC, 949 F.2d 864, 874 (6th Cir. 1991).

10. IT IS FURTHER ORDERED that the request for stay of the *Refund Order* filed by the Ameritech Operating Companies IS DISMISSED.

11. IT IS FURTHER ORDERED that the investigation in Docket 85-166, Phase II, Part 1, IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 92-257

In the Matter of

Amendment of the Commission's	RM-7956
Rules Concerning Maritime	RM-8031
Communications	

NOTICE OF PROPOSED RULE MAKING AND NOTICE OF INQUIRY

Adopted: November 5, 1992; Released: November 30, 1992

Comment Date: January 21, 1993
Reply Comment Date: February 5, 1993

By the Commission:

I. INTRODUCTION

1. By this Notice of Proposed Rule Making and Notice of Inquiry (Notice), we begin a proceeding to thoroughly review present requirements and future trends concerning maritime communications. We are proposing rules herein to reclassify public coast stations as non-dominant common carriers[1] and to allow private land mobile entities to share certain maritime frequencies.[2] We seek information that will assist us in formulating rules and regulatory policies for the maritime services that will increase safety, promote flexibility, reduce congestion, and remove unnecessary impediments to the economic well-being of the maritime industry. This Notice is the initial step in our efforts to develop an overall strategy to bring state-of-the-art communications capabilities to the maritime radio services.[3]

II. BACKGROUND

2. The maritime community has been a pioneer in the use of radio. As early as 1900, radios, then known as "wirelesses," were being installed aboard ships to receive storm warnings transmitted from stations on land. In 1906 the first international radiotelegraphy conference was held. This conference laid the basis for the development of radio communications at sea. Four years later, the Wireless Ship Act of 1910[4] was adopted giving the Secretary of Commerce and Labor the power to make regulations to require wireless equipment on passenger vessels. This was the beginning of radio regulation in the United States. Since then there have been numerous changes in the maritime communications services and operating practices.

3. Many of the changes can be directly attributed to maritime disasters. The classic example is the sinking of the Titanic which ultimately lead to the adoption of the first International Convention for the Safety of Life at Sea (Safety Convention).[5] The Safety Convention required certain ships to be equipped with a radio installation (radiotelegraph) and to maintain a continuous radio listening watch. The Vessel Bridge-to-Bridge Radiotelephone Act of 1971 (Bridge-to-Bridge Act)[6] is another example of legislation resulting from a maritime accident, in this case the Andrea Doria-Stockholm disaster. This Act required certain ships to have a VHF radio monitoring channel 13 located on the navigational bridge to communicate with passing vessels.

4. Other changes in the rules governing maritime communications can be attributed to advances in technology. For example, the first marine radios operated in the low frequency (LF) band. Because of their size and the fact that they required the operator to be able to transmit and receive manual Morse code, radio installations were generally employed only on larger oceangoing ships. With the development of radiotelephony, other ships started to equip with radio. As technology advanced, frequencies in the MF and VHF bands were made available for maritime use, further increasing the use of radio aboard ships. It was not until the introduction of transistorized equipment in the 1950s, however, that recreational boaters started to employ radio to any great extent. As advances in technology continued to reduce the size and cost of radio equipment and the benefits of radio became better known, more and more of the maritime community installed radios.

5. It has been over 90 years since radio was first used aboard ship. Today, there are approximately 635,000 maritime radio service licensees. Further, while marine radio is still used extensively for safety, it has now become an integral part of almost every facet of maritime operations. For example, the maritime radio services provide a wide range of communication services to vessels operating in international waters, coastal areas and inland lakes and waterways. Such uses include ordering ships' stores, inquiring about berthing facilities, making personal and business telephone calls, changing schedules, in short, providing a means of communications for the day-to-day activities of a multi-billion dollar industry as well as providing the critical safety link for the protection of lives and property at sea.

III. DISCUSSION

6. For regulatory purposes two distinct categories of ship radio stations have developed over the years in the maritime services. One category is comprised of radio stations required to be carried on ships subject to the Safety Convention, the Communications Act of 1934 (Communica-

[1] This responds to a petition filed by Marine Mobile Radio and Waterway Communications Systems, Inc. *See* notes 44, 45 and 61, *infra*.

[2] Our sharing proposal responds to a petition (RM-7956) filed by the Council of Independent Communication Suppliers. *See* note 62, *infra*.

[3] This proceeding does not address the rules concerning compulsory ships and the mobile satellite service. *See* 47 C.F.R. § 80.5.

[4] Pub. L. No. 262, 36 Stat. 629 (1910).

[5] Current 1974 Convention, entered into force May 25, 1980, 32 U.S.T. 47, T.I.A.S. 9700, superseded 1960 and 1948 Conventions.

[6] 33 U.S.C. §§ 1201-1208 (1971).

tions Act),[7] the Agreement between the United States of America and Canada for the Promotion of Safety on the Great Lakes by Means of Radio, 1973 (Great Lakes Agreement),[8] the Bridge-to-Bridge Act and U.S. Coast Guard rules.[9] These ships are required to carry specific radio equipment and to be capable of operating on frequencies designated for safety purposes and are termed "compulsory" ships. The second category covers all other vessels and all other radio communications capabilities.[10] These vessels are often referred to as "non-compulsory" ships and represent by far the largest group of the Commission's marine radio licensees.

7. As with ship stations, there are two major categories of land stations in the maritime radio service, public and private coast stations. A private coast station cannot offer public correspondence services, but can serve the operational and business needs of ships. Public coast stations are common carriers and offer interconnected public correspondence telecommunications and data services to ship stations.[11]

8. The rules governing compulsory ships were recently revised with the implementation of the Global Maritime Distress and Safety System (GMDSS).[12] The GMDSS, the result of over ten years of work by the world's maritime nations, is an automated ship-to-shore distress alerting system that relies on satellite and advanced terrestrial systems that will be phased in during the 1992-1999 time period. Accordingly, there is no need to review the rules and policies governing compulsory ships.

9. On the other hand, the technical requirements and operating practices for non-compulsory ships and associated coast stations have been essentially unchanged for many years. In the past we have handled problems on a case-by-case basis.[13] Lately, however, the number and complexity of problems in this area has been growing. For example, we have witnessed a dramatic increase in congestion in certain areas.[14] Frequency congestion can create serious problems for boaters in emergency situations as safety related communications require a clear channel.[15] Another concern is the slow growth and, in some cases, decline in public coast station facilities when mobile communications traffic in general is dramatically increasing. We are also concerned about the policy and safety implications of non-compulsory ships using general communications systems, such as cellular radios, in lieu of marine radios.[16]

10. The communications problems encountered by non-compulsory ships in the maritime services are the result of a number of factors. For example, we have seen a tremendous growth in mobile communications technology in the last ten years enabling manufacturers to reduce the size and cost of radio equipment. This has led to increased use and ultimately congestion. At the same time the current regulatory structure may have hampered the maritime community from taking advantage of many of the new technologies that could reduce congestion. Another factor influencing congestion has been the public's growing interest in mobile communications in general. The number of mobile radios installed in cars, for example, has increased dramatically since the 1970s.[17] This demand for mobile communications has carried over to the maritime area. More and more vessels now are being equipped with radio, adding to the congestion problem.[18] Longstanding operational practices may also make it difficult for the maritime services to compete with other radio services. For example, to make a telephone call in the maritime services

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[7] 47 U.S.C. §§ 151-713 (1934).

[8] 25 U.S.T. 939, T.I.A.S. 7837.

[9] United States Coast Guard, Department of Transportation, 33 C.F.R. I (Parts 1-199), 46 C.F.R. I (Parts 1-199), III (Parts 400-499); 49 C.F.R. IV (Parts 400-499).

[10] The carriage of such "voluntary" equipment is not limited to "voluntary" ships. For example, a ship required to carry a radiotelephone installation for compliance with the Communications Act may also carry a satellite station to conduct business or personal communications. For the purposes of this Notice we will use "voluntary" to mean any ship or boat that is not required by law, international agreement or rule to carry a radio station on board.

[11] Another type of common carrier service is provided by an automated maritime telecommunications system (AMTS). An AMTS is an automatic, integrated and interconnected maritime communications system serving ship stations. The AMTS provides voice and data public correspondence service to the maritime community similar to that provided by landline telephone systems on specific frequencies allotted to the AMTS. Calls may be placed to, from or between vessels on a direct dial basis, without operator intervention. The system will accommodate facsimile and data as well as voice communications. Currently, there is only one AMTS in operation. This system operates along the Mississippi, Illinois and Ohio Rivers, providing service primarily to the tug and towboat industry from New Orleans to Minneapolis/St. Paul, Chicago and Pittsburgh, and along the Gulf Intracoastal Waterway from the Texas/Mexican border to the Florida panhandle.

[12] *See Report and Order*, PR Docket No. 90-480, 7 FCC Rcd 951 (1992).

[13] *See e.g., In the Matter of Amendment of the Maritime Service Rules to permit both commercial and non commercial on VHF channels 67 and 72 in the Puget Sound area, Report and Order*, 6 FCC Rcd 506 (1991), *In the Matter of Amendment of Part 80 of the Commission's Rules to permit the use of fax and data emissions on marine public correspondence channels in the 156-162 MHz band, Notice of Proposed Rule Making*, 6 FCC Rcd 5991 (1991), and *In the Matter of Temporary Waiver of the Maritime Services Rules (Part 80) to Permit the use of VHF Maritime Channel 9 as a Secondary Calling Channel in the First Coast Guard District, Order*, 7 FCC Rcd 1664 (1992).

[14] In a recent study conducted by the Commission's Boston field office there were as many as 911 transmissions per hour on marine VHF channel 16. *See* FY-88 Boston Marine Safety Project Report (Jan. 26, 1988).

[15] The Commission recently adopted a Report and Order permitting the use of an alternative calling channel by recreational boaters in large part to relieve congestion on channel 16. *See Report and Order*, 7 FCC Rcd 1664 (1992).

[16] The Coast Guard permits certain fishing vessels required to carry radio equipment for safety purposes to equip with a cellular radio in lieu of other radio equipment. *See* 46 C.F.R. § 28.245(d). There are, however, no specific standards in the common carrier radio services pertaining to radio coverage or the use of cellular radios for distress and safety communications.

[17] The Cellular Telecommunications Industry Association estimates that there are approximately 7.6 million cellular subscribers. The Commission's Common Carrier Bureau estimates that there were approximately 100,000 mobile telephone subscribers before cellular radio was available.

[18] In the past 15 years the number of voluntary ship stations licensed by the Commission has increased from 225,000 to over 635,000. Anecdotal estimates from the marine industry indicate that when unlicensed equipment is included there may be over one million VHF ship stations on recreational boats.

the caller must contact a marine operator who takes certain information and then manually interconnects the caller into the public switched telephone network (PSTN). Automatic interconnection with the PSTN is common in other radio services such as the cellular radio service.

11. We believe it is both necessary and timely to commence a thorough review of the rules and policies governing non-compulsory ships and associated public and private coast stations. The primary objective of this Notice is to compile a full record that will allow us to develop a regulatory environment for non-compulsory ships and marine coast stations that will provide users the flexibility to take advantage of current and future technologies and will maximize the capabilities available in the maritime radio services. To help us better ascertain maritime needs, specific categories for comment are discussed. We are also making several proposals herein in response to three petitions filed.

A. Inquiry

Telecommunications Requirements

12. In order to develop an overall strategy it is first necessary to ascertain anticipated maritime telecommunications requirements. Therefore, we request comments in the following areas:

a) What new or additional mobile telecommunication requirements of the boating community will arise over the next ten to fifteen years? (Be as specific or detailed as possible).

b) How will these requirements impact the need for telecommunications capacity and capability? If an increase in capacity/capability is needed, how best might this be provided? (*e.g.*, spectrum allocation, advanced technologies, or operational procedures).

c) Will some of these requirements be satisfied through other services such as cellular or possibly personal communications services (PCSs)? Which requirements would be satisfied only through services specifically designed for maritime use? Why?

Technology

13. One way to increase communications capability is through the use of technology. Over the past fifteen years several technologies have been or are being developed for commercial application that could increase spectrum efficiency in the maritime services thereby reducing some of the current congestion problems. Examples of such technologies, including narrowband,[19] trunking and digital selective calling, are discussed below. We also solicit comments on other technologies that would improve spectrum efficiency and on technical rules that are outdated, serve no useful purpose or reduce spectrum efficiency. In considering what part new technology will play, commenters should take into consideration the present maritime communications environment -- tens of thousands of existing users, mostly recreational boaters, sharing a limited number of channels, need for compatibility, and the requirement for vessels to monitor certain channels for safety reasons.

14. **Trunking.** Under the current rules, one or more channels are assigned to a coast station, and the user manually selects the channel to be used for each transmission. This "conventional" mode of operation can result in some channels remaining unused while other channels are unavailable or are used heavily. Trunking is computerized technology that permits groups of channels to be shared dynamically by many users, resulting in more efficient use of the spectrum. When an end user wants a channel, a computer controlled trunking system selects an unused channel from among those allocated to the system and assigns it to the end user.

a) Current rules do not specifically address trunking on the maritime frequencies. Should we promote trunking on these frequencies?[20]

b) Are there presently enough frequencies available to coast stations to make trunking feasible, or would additional channels need to be made available?

c) If trunking is permitted on maritime frequencies, should there be a mandated trunking standard to ensure that all marine radios that are designed to use trunking will work with all coast stations regardless of geographic area and, if so, what should that standard be?

15. **Digital Selective Calling (DSC).** Briefly, DSC is the transmission of digital information, much like a telephone number, on MF, HF and VHF radio frequencies specifically designated for DSC calls.[21] DSC frequencies are used as gateway channels to automatically establish contact between marine radio stations for distress calls and routine operational communications.[22] Because the DSC call is automatically routed and signals when a communications link is established it is very easy to use. Additionally, DSC can be used to interconnect to the public switched telephone network. Presently, most radio contact is established by making a voice call and relying on an aural watch by the called party to hear the call. The advantages of DSC include faster alerting capabilities, automatic transmission of information, such as the nature of a distress situation, and the identity and location of the caller. Further, in a non-distress situation, DSC minimizes the connect time necessary to place a call and increases spectrum efficiency. The Coast Guard submitted a Petition for Rule Making (Petition) dated June 23, 1992, RM-8031, requesting that the FCC require that all marine MF, HF and VHF transmitters sold in the United States after February 1, 1997, have at least a minimum DSC signalling capability.[23] The Coast Guard's suggested minimum requirements for DSC capability are listed in a matrix attached as Appendix C.

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[19] Narrowband technology is addressed under the section discussing spectrum. *See* paragraphs 27-30.

[20] Under the present U.S. maritime frequency scheme only public coast stations are assigned frequency pairs. Private coast stations are assigned single frequencies.

[21] DSC radios are required to be carried as part of the GMDSS.

[22] The technical and operational characteristics of this system are contained in CCIR Recommendations 493 and 541, respectively.

[23] *See* Coast Guard Petition at 1.

16. The Coast Guard notes that in 1999 all vessels subject to the GMDSS amendments to the Safety Convention will be required to be equipped with transmitters with DSC capability and that it will no longer be possible to contact these "Convention" ships on the present calling channels.[24] The Coast Guard is concerned that when Convention ships and non-Convention ships operate in the same waters, a common occurrence, that such vessels will not be able to communicate effectively with one another particularly in closing situations.[25] The Commission received 6 comments in response to the Coast Guard Petition.[26] SEA and NECODE oppose certain technical aspects contained in the Petition. KLC opposes the Petition because it believes that the Commission's Rules are already sufficient to address the issues proposed by the Coast Guard. NMEA, an association representing marine electronics manufacturers, supports the Petition. Radio Holland, a representative of a DSC equipment manufacturer, states that the CCIR should be asked its opinion.

17. Of the 6 commenters 5 supported the concept raised in the Petition that DSC is an advantage to increase safety. Additionally, there may be other advantages to proposing rules as requested by the Coast Guard that are not directly related to safety and were not addressed in the comments. For example, public coast stations generally do not offer automatic telephone service. As a result most telephone calls are made manually from ship-to-shore using the assistance of a marine operator. It is very difficult to make a telephone call from shore-to-ship through most public coast stations. DSC may offer public coast stations a means to automate their operation.[27] Further, DSC offers enhanced spectrum efficiency for marine radio users operating in areas where there is little or no international traffic, the Mississippi River for example. DSC users will immediately know whether a call is completed and will not have to make several voice calls to establish contact.

18. The Coast Guard Petition raises potential safety questions that may occur in 1999 and we believe those concerns should be addressed in a Notice of Proposed Rule Making. Before we propose such rules, however, we wish to compile a complete record on how to best address the safety concerns of the Coast Guard and to avoid onerous regulation. Therefore, we are seeking specific comment from equipment manufacturers, public coast station operators, especially those with experience with DSC, fleet operators and the marine public regarding the Coast Guard Petition and the following questions:

a) Should we propose rules that require a minimum DSC capability for all marine radios? If so, should we require DSC to be an integral part of marine radios or should we permit add-on devices to give DSC capability to existing marine radios?

b) It appears that mandating that all marine radios have at least a minimum DSC requirement will increase the price of marine radio equipment. What will the price increase be for radios that have DSC as an integral part? As an add-on device? Will such a price increase prevent boat owners from purchasing a radio?

c) If we do not require some DSC capability, what will be the effect on boaters who rely on the Coast Guard to respond to distress calls? Implicit in the Coast Guard Petition is that there will be a reduced watch on marine VHF channel 16 by Coast Guard stations after 1999.

d) Section 80.207(a)(4) of the Commission's Rules, 47 C.F.R. § 80.207(a)(4), permits the use of selective calling equipment, other than DSC, for a period of 3 years after the Commission authorizes DSC as the only selective calling technique permitted in the maritime service. Should the Commission declare DSC as the only selective calling technique permitted to be used?

e) Should we consider the optional use of DSC on VHF channels other than marine VHF channel 70 (156.525 MHz)?

f) The Coast Guard's proposed matrix is for minimum capability and, for example, does not require DSC radios to be capable of automatically making interconnected phone calls. Should we require such capability?[28] Is the matrix sufficient as listed or should we modify the minimum requirements?

19. **Narrow-Band Direct-Printing (NBDP).** Narrow-band direct-printing is a form of telegraphy for the transmission and receipt of data communications. The Commission's Rules currently restrict the data modulation rate for NBDP to 100 baud.[29] We have received inquiries from coast station operators concerning new equipment that is capable of higher data rates as well as the 100 baud rate. By using higher data rates more information can be transmitted in a shorter period of time, thereby reducing the time any particular NBDP channel is used. The modulation rate of 100 baud, however, may be essential for effective long distance communications because of error rates and to ensure interoperability.

a) Should the Commission allow higher data rates, and if so, what rates if any should be specified?

b) Should we specify that such equipment must automatically revert to 100 baud when interrogated in order to ensure system compatibility?

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[24] Under the current system ships stand watch on the international radiotelephone distress and calling frequencies 156.8 MHz (marine VHF channel 16) and 2182 kHz.

[25] For example, barges and tug boats operating in harbors are not subject to the Safety Convention and will not be required to equip with DSC. Additionally, pleasure boats operating in coastal waters will not be required to equip with DSC.

[26] Commenters are Necode Electronics (Necode), SEA, Inc. (SEA), Radio KLC, Inc. (KLC), OWA Inc. (OWA), National Marine Electronics Association (NMEA) and Radio Holland Group (Radio Holland).

[27] In paragraph 26 of this Notice we request comments on permitting public coast stations to fully automate their operation.

[28] Although this appears to be a market driven decision, we are asking in another part of this inquiry whether we should permit public coast stations to fully automate their operation. If such automatic operation were permitted marine radio users without DSC capability would not be able to place or receive telephone calls.

[29] The technical requirements for NBDP are contained in CCIR Recommendations 476 and 625. *See* 47 C.F.R. § 80.219.

Policy Issues

20. Simply permitting a new technology may not result in its widespread use and the increase in spectrum efficiency anticipated. Other changes are often needed to promote and facilitate spectrum efficient technologies. Experience has shown that flexible rules together with certain incentives have successfully promoted spectrum efficiency in the past. Possible policy changes that we want to explore specifically include the use of private carriers and exclusivity, allowing marine coast stations to serve land vehicles in addition to boaters, and increased sharing of maritime frequencies.

21. **Private Carriers.** One possible way to increase spectrum efficiency in the maritime services is to allow private coast stations to become private carriers providing services similar to those provided by Specialized Mobile Radio (SMR) services under Part 90 of the Commission's Rules (47 C.F.R. Part 90).[30] Under the private carrier concept, an entrepreneur builds a system and offers communication service on the system to eligible end users. Private carriers offer the option of establishing a single communications system to provide services to a number of different entities thereby allowing more users to operate in less spectrum. They also can often provide a more cost effective or higher quality service than small licensees can afford on their own. Accordingly, we solicit comments on whether we should allow private carriers on maritime VHF channels. We also request comments on how we should license private carrier operations (*e.g.*, license base stations on an exclusive basis, license end users, allow mobile relays, etc.). Finally, we seek comments on whether it will be necessary to preempt such private carriers in the maritime service from state and local government jurisdiction as was done for private carriers in the private land mobile services.[31]

22. **Exclusivity.** As we have stated before, the incentive for spectrum efficiency is not the same for licensees without exclusive use as for licensees with exclusive use of channels.[32] On shared channels, such as those assigned to private coast stations, the advantage gained if one licensee is spectrum efficient is shared by all the channel's users. Generally, the benefits of spectrum efficiency may not accrue to the user of the spectrum efficient equipment. Further, exclusivity may encourage implementation of specific spectrum efficient technologies such as trunking. Therefore, we seek comment on whether and if so, how, we should introduce exclusivity into the private coast station assignment process.[33]

23. **Permissible Communications.** In 1986, we adopted a *Report and Order* that declined to adopt rules that would have permitted VHF public coast stations to serve land vehicles on a subsidiary basis.[34] In doing so, we indicated that we would consider requests for waiver of the rules on an *ad hoc* basis. We have since granted a number of waivers that allow public coast stations to offer service to a limited number of vehicles during off peak periods on a strictly secondary basis.[35] We granted the waivers based on the fact that each station had limited marine traffic that was variable in terms of peak usage. We have received no complaints about these operations. Further, the maritime service benefits from such waivers by keeping some public coast stations in business when traffic is low, whereas they might otherwise stop operating. Accordingly, we seek comment on whether to change our rules to allow VHF public coast stations, including AMTS stations, to serve land vehicles on a regular basis.

24. **Intra-service Sharing.** Another way of making more effective use of the spectrum and increasing licensee flexibility is through frequency sharing.[36] We have used sharing in the past to resolve congestion problems on a case by case basis.[37] Ineffective use of some frequencies, however, continues to occur. For example, in recent years there has been a decrease in traffic in the MF band, resulting in the closure of a number of MF public coast stations. Records show the number of MF public coast stations has decreased by 25% since 1989. On the other hand, private coast station frequencies have been congested recently in high traffic areas. Allowing private coast stations to use public coast station public correspondence frequency pairs in the MF (2-4 MHz) band may help resolve this problem.

25. We may also want to consider intra-service sharing in the VHF frequency bands. There are a total of 42 marine VHF channels available for radiotelephone communications between ship and private coast stations. Three of the channels are reserved for distress, safety and calling. Of the remaining channels, only a few may be used for noncommercial operations such as by recreational boaters. For example, recreational boaters are generally limited to six VHF channels except in the Great Lakes and Puget Sound.[38] We therefore seek comments regarding establishing some general intra-service sharing rules to eliminate the need for individual waiver proceedings.

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[30] Coast stations generally meet the eligibility requirements for SMR licenses and can offer service to ships. Additionally, existing SMR licensees can offer service to vessels. *See Specialized Mobile Radio*, Private Radio Bureau, Policy and Planning Branch, Federal Communications Commission, Washington, D.C. (March 1991).

[31] *See* 47 U.S.C. § 332.

[32] *See In the Matter of Spectrum Efficiency in the Private Land Mobile Radio Bands In Use Prior to 1968, Notice of Inquiry*, PR Docket 91-170, 6 FCC Rcd 4126 (1991).

[33] A VHF public coast station already has exclusive use of a channel in its service area. *See* 47 C.F.R. § 80.467.

[34] *See Report and Order*, PR Docket No. 86-2, 1 FCC Rcd 1312 (1986).a

[35] *See e.g., In the Matter of Answer Exchange, Inc., Memorandum Opinion and Order*, 3 FCC Rcd 633 (1988), *In Matter of Recreational Marine Association, Memorandum Opinion and Order*, 4 FCC Rcd 6287 (1989), *In the Matter of Whidbey Telephone Company, Memorandum Opinion and Order*, 4 FCC Rcd 8305 (1989), *In the Matter of Request for waiver of Section 80.453 of the Rules to permit public coast station WHU247 to serve mobile vehicles on land, Memorandum Opinion and Order*, 6 FCC Rcd 4846 (1991) and *In the Matter of Request for waiver of Section 80.453 of the Rules to permit public cost station WAH to serve mobile vehicles on land, Memorandum Opinion and Order*, 7 FCC Rcd 2238 (1992).

[36] Generally, such frequency sharing is either inter-service, where frequencies are shared between different radio services, or intra-service, where frequencies are shared between different categories in the same service.

[37] *See e.g., Report and Order*, PR Docket No. 90-27, 6 FCC Rcd 506 (1991) (permitting both commercial and noncommercial communications on VHF channels 67 and 72 in the Puget Sound area) and *Report and Order*, PR Docket No. 88-350, 4 FCC Rcd 1637 (1989)(permitting both commercial and noncommercial communications on VHF Channels 79 and 80 in the Great Lakes).

[38] *See* 47 C.F.R. § 80.373(f).

26. **Automatic Interconnection with PSTN.** One possible cause of the displacement of public coast stations by the cellular industry is the inconvenience of placing a call through a public coast station which must manually interconnect to the PSTN. Not only does it take longer to place the call, but the caller must also typically give out personal information such as a credit card number to the marine operator to place a call.[39] In a variety of ways, the current rules effectively prevent automatic interconnection to the PSTN.[40]

a) Should we consider changing the Commission's Rules to permit automatic interconnection to the PSTN for all coast stations? We note that certain classes of coast stations--the AMTS and stations in the Great Lakes--are already authorized to interconnect automatically and that coast stations that equip with DSC can automatically interconnect now.

b) What effect, if any, would there be on maritime safety if the Commission were to allow automatic interconnection with the PSTN in the marine radio services and remove operator requirements?

c) Could DSC provide the necessary automatic identification necessary to provide interconnection to the PSTN? If so, should the Commission consider this additional use of DSC when deciding if it should be mandatory for all VHF radios? Should we consider other signalling and identification schemes and, if so, what schemes?

d) Should we require some means of operator assistance for ship-to-shore telephone calls, even calls originated on the DSC marine VHF channel 70?

Spectrum

27. Sections 80.371(c) and 80.373(f) of the Commission's Rules, 47 C.F.R. §§ 80.371(c) and 80.373(f), list the VHF channels in the 156-162 MHz band available nationwide for use by ships and coast stations. In areas where there are a large number of vessels, the channels available are already heavily congested.[41] It would be nice if we could resolve congestion problems solely through increased flexibility, intra-service sharing, and the use of new technologies. This, however, may not be feasible. In certain areas additional channels may be needed. There are two likely possibilities for obtaining additional marine channels; one is to split the current 25 kHz channels, the other is through inter-service sharing. These options are discussed below.

28. **Narrowband.** In recent years, new analog and digital modulation technologies have been developed which provide a more efficient use of the radio frequency spectrum. The use of 12.5 kHz narrowband FM (NBFM), amplitude compandored sideband (ACSB), and various digital modulation techniques are among the most common methods that have been suggested. To address the congestion problem in the VHF maritime mobile band, the International Radio Consultative Committee (CCIR) will be considering this subject during the 1992-1994 time frame. The U.S. has submitted a draft report/recommendation to the CCIR on this subject suggesting the use of 12.5 kHz spacing using NBFM techniques to reduce the spectrum congestion problem in the VHF maritime mobile band in the near term. Other interested administrations participating in the CCIR will review the U.S. draft document and will be providing additional comments. Considering factors such as congestion, international interoperability, cost, compatibility with existing 25 kHz equipment, and ease of implementation, should the Commission continue to support 12.5 kHz spacing using NBFM or consider some other narrowband technology for the maritime mobile service?

29. **Inter-service Sharing.** Certain channels that are allocated internationally to the maritime service are assigned domestically to the private land mobile radio (PLMR) service. Because some of these PLMR frequencies appear to be little used in some areas we believe that they could be made available for sharing with the maritime service.[42] An initial review of our licensing records indicates that some of the private land mobile channels in question have very few PLMR licensees operating at fixed locations within 80 kilometers (50 miles) of the United States coastline. Such sharing would expand the number of channels available to marine licensees and thus reduce congestion. Further, sharing of PLMR frequencies would offer an opportunity to improve spectrum efficiency at little cost to the maritime community and with little potential for interference to PLMR users. Therefore, we seek comment on the feasibility of sharing between the marine radio and PLMR services.

a) Should we permit marine users to share certain PLMR VHF channels allocated internationally for maritime operations? If so, what are the appropriate sharing criteria? How should such sharing be implemented and coordinated?

AMTS Channels

30. The Commission adopted a *Report and Order*, that among other things, reallocated one megahertz of spectrum previously allotted to the AMTS to a new Interactive Video Data Service (IVDS).[43] There is now one megahertz of spectrum that no longer is useful for AMTS. There are technical considerations in deciding how this spectrum could be used for maritime services. One main consider-

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[39] Some coast stations provide an account service where users can pre-file the necessary billing information with the coast station. The user must still give out his account number over the air when placing a call through the coast station.

[40] Among other ways is the requirement to have the operation of a coast station transmitter be performed by an operator on duty and the limitations on permissible emissions. *See* 47 C.F.R. §§ 80.153 and 80.207(d).

[41] The Commission's Boston field office reported that based on studies it conducted during the recreational boating seasons in 1987 and 1988, the number of calls made per hour on marine VHF channel 16 increased from a maximum of 689 calls per hour in 1987, to 911 calls per hour in 1988, an increase of 32 per cent. *See* FY-88 Boston Safety Project Report (Nov. 4, 1988).

[42] Certain channels that are allocated to the maritime services internationally in Appendix 18 of the Radio Regulations are not being used in the United States by the maritime radio services. These channels, however, are being used by certain land PLMR services either on a direct channel or an adjacent channel basis. The railroad service and highway maintenance services both operate on channels that are either Appendix 18 channels or are 12.5 kHz removed from those channels.

[43] *See Report and Order* in GEN Docket 91-2, 7 FCC Rcd 1630 (1992). The automated maritime telecommunications system

ation, however this spectrum is to be used, is potential interference to TV channel 13. Suggestions and proposed uses for this spectrum should address potential interference. Further, in keeping with the Commission's policies, greater weight will be given to suggestions using spectrally efficient communications techniques.

B. Proposed Rule Making

Reclassification of Public Coast Stations as Non-Dominant Common Carriers

31. Mobile Marine Radio, Inc. (MMR) and Waterway Communications System, Inc. (Watercom) (Petitioners) jointly filed a petition seeking Commission determination that maritime mobile service providers be reclassified as non-dominant common carriers.[44] Petitioners are public coast station licensees which provide telegraphy services, comprised of Morse telegraphy, narrow-band direct-printing and radiofacsimile as well as MF, HF and marine VHF band radiotelephony service. COM/NAV Marine, Inc. filed supporting comments.[45] In addition, the U.S Coast Guard stated that it "does not believe [petitioners' proposal] will adversely affect safety of life at sea."[46] Currently, public coast stations are subject to the full panoply of regulations under Title II of the Communications Act. Reclassification would subject such licensees to the streamlined regulatory scheme for international non-dominant carriers outlined in Section 63.10 of the Commission's Rules, 47 C.F.R. § 63.10.[47]

32. In its *Domestic Common Carrier* proceeding,[48] the Commission stated it would consider petitions from certain dominant common carriers seeking determination of non-dominant status. Petitioners assert that subsequently, in CC Docket No. 85-107, the Commission classified certain international carriers as non-dominant common carriers.[49] Thus, petitioners argue that, for purposes of the Communications Act, they are international carriers.[50] and therefore request to clarify their status as non-dominant common carriers.

33. We agree with petitioners that they fall under the definition of international carriers described in the Communications Act for these purposes.[51] Additionally, we agree with petitioners that reclassification of maritime mobile public coast stations should reduce a significant burden on both the licensees and the Commission. In order to be reclassified as non-dominant, common carriers must demonstrate that they do not possess market power.[52]

34. Maritime mobile public coast stations serve ships operated on inland waterways of the United States and the high seas. [53] The inland waterways market is comprised of, generally, radiotelephony service. In General Docket No. 80-1,[54] the Commission allocated spectrum for an automated inland waterways communications system (IWCS)[55] along the Mississippi River and connecting waterways as a means of improving the maritime mobile radio services. The Commission noted that "there is ample evidence that the introduction of IWCS service will in fact increase competition on the inland waterways." 88 FCC 2d 678, 697 (1981). Further, in *Petition of Riverphone, Inc.*, the Commission stated that IWCS "will be subject to competition from existing public coast stations, as well as land mobile and cellular systems which are permitted to serve vessels." The U.S. Court of Appeals for the D.C. Circuit, in *WJG Tel. Col v. FCC*, 675 F.2d 386 (D.C. Cir. 1982), agreed that the Commission had fostered a positive environment for competition when it established IWCS. In addition, the maritime mobile service for the inland waterways is comprised of a substantial number of highly competitive entities.

35. The high seas maritime market may be characterized as the high seas public correspondence market. This market generally consists of radiotelegraphy and radiotelephony. Although safety requirements of the Communications Act[56] curtail the subsititutability of the

(AMTS) uses duplex channel pairs and formerly was allocated 80 such pairs divided up into 4 groups of 20 each, labelled A,B,C and D. One half of Groups C and D was reallocated to IVDS in GEN Docket 91-2. *See* also *Memorandum Opinion and Order* in GEN Docket 88-372, 7 FCC Rcd 3607 (1992).

[44] Petition for Determination of Non-Dominant Common Carrier Status filed February, 1988 by Mobile Marine Radio, Inc. and Waterway Communications System, Inc.

[45] COM/NAV Marine, Inc.'s comments summarize Petitioners' views. Although they were fully considered, they will not be separately discussed.

[46] *See* Letter from Chief, Telecommunications Systems Division, U.S. Coast Guard to Chief, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. (May 1, 1989). The Coast Guard submitted its comments in response to a request from the Commission. In addition, the Coast Guard urged, *inter alia*, that prior notice of discontinuance of public coast stations be provided to the International Telecommunications Union, the appropriate Coast Guard Commander and the Defense Mapping Agency. Licensees are currently required to provide notification of discontinuance to the Coast Guard "as soon as practicable." *See* 47 C.F.R. § 80.302.

[47] The streamlined regulatory scheme, among other things, permits giving 120 days notice of intent to close stations and the filing of tariffs on a minimum of 14 days notice. *See* 47 C.F.R. § 61.58(b).

[48] *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Fourth Report and Order, (Domestic Common Carrier)* CC Docket No. 79-252, 95 FCC 2d 554, 582 (1983).

[49] *International Competitive Carrier Policies*, CC Docket No. 85-107, 102 FCC 2d 812 (1985)(*International Competitive Carrier*).

[50] *See* Section 3(f) of the Communications Act, 47 U.S.C. § 153(f).

[51] Public coast stations established to serve ships operated on the inland waterways, the Great Lakes and the high seas are capable of communicating with ship stations located outside the United States as well as contacting foreign flag ships (and, by extension, foreign accounting authorities for international settlement of accounts).

[52] *See* note 49, *supra*. The *International Competitive Carrier* test requires petitioners to address the relevant product and geographic markets, supported by factual evidence of demand and supply substitutability, and market power, supported by factual evidence of the level and change in market shares and entry.

[53] For purposes of this discussion, the term inland waterways includes the Great Lakes and coastal waters, bays and sounds of the United States, and the term high seas pertains to coastal waters beyond VHF range of the nearest land (approximately 25 nautical miles).

[54] *Inland-Waterways Communications Systems, Report and Order*, 84 FCC 2d 875 (1981); *ERRATA*, 46 Fed. Reg. 26485 (1981), *recon.*, 88 FCC 2d 678 (1981); *aff'd sub nom., WJG Telephone Company, Inc. v. FCC*, 675 FCC 2d 386 (1982).

[55] Currently referred to as AMTS. *See* note 11, *infra*.

[56] *See* 47 U.S.C. §§ 351-364.

radiotelegraphy market, vessels operated8on the high seas have access to alternative communications services. For example, satellite facilities, usually associated with the INMARSAT system, are generally available to ship stations. In addition, cellular radio offers increasingly competitive service that is supplanting the use of public coast stations. In the Gulf of Mexico, for example, Petrocom operates an offshore cellular radio service that provides voice and data services to ships up to 200 nautical miles offshore.[57] The Commission recognized that coast stations should be authorized to provide facsimile and data services on VHF public channels,[58] to be more competitive. Further, there are private services available to ship operators such as shared mobile relay services that offer interconnected telephone service on a cost-shared basis. Due to the number of public correspondence alternatives, it does not appear that public coast stations have the ability to engage in predatory or monopolistic activities. Finally, we note that Petitioners' assertions of non-dominance are not opposed.

36. Under the test established in the *International Competitive Carrier*[59] proceeding, we find that public coast stations do not possess market power. Therefore, we propose amending the rules to subject public coast stations to the streamlined regulatory scheme for non-dominant carriers.[60] In addition, in further comments,[61] MMR asks the Commission to differentiate among maritime common carriers in the maritime market. Therefore, we also ask the following questions:

a) For purposes of the proposed reclassification of maritime mobile common carriers as non-dominant, is there a need to differentiate between 1) coast stations which provide both land-line telex service and maritime service and 2) maritime common carriers that provide only maritime service?

b) Alternatively, should dual telex authority carriers be required to operate their maritime and point-to-point telex capabilities on a separated basis to prevent alleged cross-subsidization?

Private Land Mobile Use of Marine Frequencies

37. The Council of Independent Communication Suppliers (CICS) has filed a Petition for Rule Making proposing that the Commission's Rules be amended to expand private land mobile Industrial and Land Transportation (I/LT) service operations within the marine VHF (156-162 MHz) band.[62] CICS notes that maritime frequencies are unused in many land-locked regions of the United States while I/LT channels suffer congestion. Further, CICS claims that use of selected public correspondence and port operations frequencies could be permitted on a primary basis without degrading present or future maritime services.[63] CICS proposes a geographic separation of 50 miles, a power limit of 50 watts, and a base station antenna height limit of 120 meters (400 feet) to ensure that I/LT usage will not interfere with maritime operations. CICS further proposes that coordination by the Special Industrial Radio Service Association (SIRSA) be required.

38. Six parties filed comments questioning the various criteria proposed to provide interference protection to existing and future maritime services when shared frequency base stations are separated by short distances.[64] For example, Mobile Marine Radio, Inc. opposes the CICS petition and states that the separation between co-channel stations must be at least 200 miles to provide meaningful protection to maritime operations. Additionally, a majority of the comments noted that a primary I/LT allocation would inhibit growth of public coast stations by limiting future service areas. In reply comments, CICS recommends that the Commission propose rules similar to those which already govern coast stations,[65] in lieu of a minimum mileage separation. CICS claims, however, that certain correction factors must be added to the current coast station interference protection criteria. For example, the engineering study provided by CICS notes that coast stations are generally separated by smooth terrain or water, while rough terrain (which limits signal propagation) may separate the proposed I/LT stations from existing coast stations. Additionally, the study points out that any proposed rules must also compensate for the difference in antenna height between maritime and I/LT mobile units.[66] Both of these corrections propose to decrease the size of each station's service area.

39. Inter-service sharing has been used in the private land mobile services to increase spectrum efficiency for a number of years.[67] Further, the Commission has permitted sharing between the maritime and private land mobile services in the past on a case-by-case basis without receiving any interference complaints.[68] Based on past experience, it appears that we can again use inter-service sharing to increase spectrum efficiency by allowing private

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[57] In general, however, cellular service is ancillary to land service and cellular providers offer service to ships which operate within ten miles of land.

[58] *See Report and Order*, PR Docket No. 91-293, _____ FCC Rcd _____ (1992).

[59] *See* note 52, *supra*.

[60] *See* note 47, *supra*. The proposed change would require amending the following rules: Sections 63.62(e), 63.64, 63.69, 63.70, 63.90 and Part 80 of the Commission's Rules, 47 C.F.R. §§ 63.62(e), 63.64, 63.69, 63.70, 63.90.

[61] Further Comments filed December, 1991 by Mobile Marine Radio, Inc. No comments were filed in response to MMR's further comments.

[62] CICS's petition, which was placed on public notice March 6, 1992, excludes the Business Radio Service.

[63] CICS requests that I/LT users be eligible to share the public correspondence frequencies found in 47 C.F.R. § 80.371(c) and certain port operations frequencies found in 47 C.F.R. § 80.373(f).

[64] Comments to the CICS petition were filed by American Commercial Lines, Inc., Associated Public-Safety Communications Officers, Inc., Forest Industries Telecommunications, Mobile Marine Radio, Inc., the Ohio River Company, and the Utilities Telecommunications Council.

[65] Within its service area, each public coast station must provide a minimum field strength of + 17 dBu, as calculated in accordance with Section 80.771 of the Commission's Rules, 47 C.F.R. § 80.771. Further, in order to provide protection to co-channel coast stations, the ratio of desired to undesired signal strengths must be at least 12 dB within the entire service area of a station.

[66] Section 80.767 of the Commission's Rules, 47 C.F.R. § 80.767 assumes maritime mobile antennas to be 30 feet above ground level, while CICS claims that the common I/LT antenna height is 6 feet.

[67] *See* 47 C.F.R. § 90.176.

[68] For example, several waivers have been granted for Local Government Radio Service licensees to use maritime frequencies in areas located far from waterways, where maritime channels are not extensively used, such as Arizona and Nevada.

land mobile eligibles to utilize maritime channels in areas far removed from coastlines and waterways on a routine basis.

40. In any inter-service sharing arrangement, it is necessary to establish criteria for sharing that provides protection to existing services, yet is not too restrictive, effectively prohibiting sharing. Therefore, we propose to make marine VHF public correspondence channels 24-28 and 84-87 available for sharing with certain I/LT eligibles on a co-primary basis.[69] Further, such use must be in accordance with the restrictions found in the CANADA/U.S.A. channeling agreement for VHF maritime public correspondence.[70] We are proposing to limit the sharing to I/LT eligibles because they commonly operate in regions where maritime channels are not used. Nevertheless, we request comments as to whether we should extend sharing to the public safety and business radio services. Additionally, in PR Docket 91-170, 6 FCC Rcd 4126 (1991), we are proposing rules that may define the I/LT and business radio services as one category, noncommercial, and requires narrow-band radios to be used in all new systems.

41. While such inter-service sharing of marine frequencies with I/LT users[71] has the potential to alleviate congestion in the I/LT services, we must propose rules that should minimize interference to existing and future maritime operations. One option would be to use field strength contours such as we do with co-channel public coast stations. Another option would be to establish geographic separations between proposed I/LT stations and existing public coast stations. We believe defining protection in terms of a geographic separation instead of requiring I/LT licensees to calculate field strength contours will make the rules easier for applicants to understand and for the Commission to administer. Therefore, to provide additional flexibility, we are proposing a matrix with a minimum separation of 88 kilometers (55 miles) required between any proposed I/LT base station, navigable waterways and co-channel public coast stations.[72] The geographic separations are based on protecting maritime operations within 43 kilometers (27 miles) of any co-channel public coast station while providing room for future expansion. [73] Further, we are proposing to limit the I/LT base station antenna height to 120 meters (400 feet) and the transmitter power to 50 watts for base stations and 20 watts for mobiles. These criteria allow sharing in areas where maritime channels are not likely to be used and prohibit it in areas where maritime channels are heavily used. The higher the power and antenna height proposed, the further the land mobile entity must be removed from maritime operations. We seek specific comment on:

a) The proposed separation criteria and whether the term "navigable waterways" will be sufficient to protect future public coast station expansion.[74]

b) Whether we should require the use of narrow-band radios and what technical rules, if any, we should apply.

c) What the effect on this proposal will be if there is one noncommercial category of radio service that replaces I/LT and business.

42. By this action, we are proposing amendments to Parts 2, 80, and 90 of the Commission's Rules, 47 C.F.R. Parts 2, 80, and 90, allowing marine VHF public correspondence channels to be used by eligibles in the I/LT radio services for base/mobile operations in areas more than 88 kilometers (55 miles) from navigable waterways and existing co-channel public coast stations. We are also proposing to require evidence of frequency coordination.[75]

IV. CONCLUSION

43. We recognize the broad scope of this Notice and the inherent difficulty in projecting maritime communication needs for the future. The information obtained in this inquiry, however, will be useful only to the extent that it is specific and comprehensive. The public is encouraged to provide detailed information on the issues discussed herein so that the Commission can evaluate possible regulatory alternatives. In addition to the specific points raised and rules proposed, we solicit comments on any other issue related to improving the maritime radio services.

V. PROCEDURAL MATTERS

INITIAL REGULATORY FLEXIBILITY ANALYSIS

44. An Initial Regulatory Flexibility Analysis is contained in the Appendix to this Notice of Proposed Rule Making and Notice of Inquiry.

45. Accordingly, we adopt this Notice of Proposed Rule Making and Notice of Inquiry under the authority contained in Sections 4(i), 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, and 403. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested persons may file comments on or before **January 21, 1993** and may file reply comments on or before **February 5, 1993.** To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you should file an original and nine copies. You should send your comments and

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[69] We are not proposing to allow sharing on the port operations channels requested at this time because of the increased interference potential associated with simplex operations. Nevertheless, we request comments on this issue.

[70] *See* Section 80.57 of the Commission's Rules, 47 C.F.R. § 80.57.

[71] *See* paragraph 29 for discussion of inter-service sharing of land-mobile frequencies.

[72] The minimum separation is a function of the proposed I/LT station's antenna height above average terrain (HAAT) and effective radiated power (ERP).

[73] The distances in the matrix were found using the propagation curves specified in Section 80.767 of the Commission's Rules, 47 C.F.R. § 80.767, assuming non-overlap of the 14 dBu interference contour of a proposed I/LT station with the 26 dBu service contour of any existing public coast station. The 26 dBu public coast station service contour is the sum of the current 17 dBu contour and the 9 dB antenna height factor suggested by CICS, and is assumed to be equal to 43 kilometers (27 miles).

[74] The term "navigable waterways" is defined in 33 C.F.R. § 2.205-25.

[75] We are proposing to certify the Special Industrial Radio Service Association as the recognized coordinator.

reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

46. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.206(a).

47. For further information, contact Marc S. Martin, Room 5126 or Roger S. Noel, Room 5114, Private Radio Bureau, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554; telephone 202-632-7175, mail stop 1700C2.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

PROPOSED RULES

Parts 2, 63, 80 and 90 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

A. Part 2 - FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS.

1. The authority citation for Part 2 continues to read as follows:

AUTHORITY: Secs. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.106 is amended by adding land mobile allocations to the United States table, non-government section (column 5) and FCC use designators (column 6), and adding one non-government footnote, to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

United States table non-Government Allocation MHz (5)	FCC use designators Rule part(s) (6)
* * *	
157.1875 - 157.45 MARITIME MOBILE LAND MOBILE	MARITIME (80) PRIVATE LAND MOBILE (90)
613 US223 US266 NG111 NG153	
* * *	
161.775 - 162.0125	
MARITIME MOBILE LAND MOBILE	DOMESTIC PUBLIC LAND MOBILE (22) MARITIME (80) PRIVATE LAND MOBILE (90)
613 US266 NG6 NG153	
* * * * *	

NG153 The frequency pairs 157.200/161.800 MHz, 157.225/161.825 MHz, 157.250/161.850 MHz, 157.275/161.875 MHz, 157.300/161.900 MHz, 157.325/161.925 MHz, 157.350/161.950 MHz, 157.375/161.975 MHz and 157.400/162.000 MHz are available for assignment to stations in the private land mobile radio service as described in § 90.283 of this chapter.

* * * * *

B. Part 63 - EXTENSION OF LINES AND DISCONTINUANCE OF SERVICE BY CARRIERS AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for Part 63 continues to read as follows:

AUTHORITY: Sec. 4, 48, Stat. 1066, as amended 47 U.S.C. 154. Interpret or apply sec. 214, 48 Stat. 1075, as amended; 47 U.S.C. 214.

2. In Section 63.62, paragraph (e) is removed and paragraphs (f) and (g) are redesignated as (e) and (f) respectively.

3. Sections 63.64, 63.69 and 63.70 are removed.

4. In Section 63.90, paragraph (a) introductory text is revised to read as follows:

§ 63.90 Publication and posting of notices.

(a) Immediately upon the filing of an application or informal request (except a request under § 63.71) for authority to close or otherwise discontinue the operation, or reduce the hours of service at a telephone exchange (except an exchange located at a military establishment), the applicant shall post a public notice at least 20 inches by 24 inches, with letter of commensurate size, in a conspicuous place in the exchange affected, and alos in the window of any such exchange having window space fronting on a public street at street level. Such notice shall be posted at least 14 days and shall contain the following information, as may be applicable:

* * * * *

C. Part 80 - STATIONS IN THE MARITIME SERVICES.

1. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. In Section 80.371, the table listed in paragraph (c) is amended by adding Footnote 4, to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) * * *

Working Carrier Frequency Pairs in the 156-162 MHz Band[1] [4]

* * * * * [4] Except for the frequency pair 157.425/162.025 MHz, these frequencies may be shared with stations in the private land mobile radio service under the terms of operation described in § 90.283 of this chapter.

* * * * *

D. Part 90 - PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

2. A new Section 90.283 is added to Subpart K to read as follows:

§ 90.283 Inter-service sharing of maritime frequencies in the 156-162 MHz band.

(a) The following frequency pairs may be assigned to any station eligible for licensing in the Industrial (except Business) or Land Transportation Radio Services for duplex operation in accordance with the rules of their individual services, the conditions set forth in this section and the CANADA/U.S.A. channeling agreement for VHF maritime public correspondence found in § 80.57 of this chapter.

Frequency (MHz)	
Base Station Transmit	Mobile Station Transmit
157.200	161.800
157.225	161.825
157.250	161.850
157.275	161.875
157.300	161.900
157.325	161.925
157.350	161.950
157.375	161.975
157.400	162.000

(b) Assignment will be made only when VHF frequencies available for assignment under this Part are not available. Applicants must seek frequency coordination in accordance with § 90.175 of this chapter.

(c) Station power, as measured at the output terminals of the transmitter, must not exceed 50 watts for base stations and 20 watts for mobile stations. Antenna height (AAT) must not exceed 120 meters (400 feet) for base stations and 15 meters (50 feet) for mobile stations. Such base and mobile stations must not be operated on board aircraft in flight.

(d) The following table, along with the antenna height (AAT) and power (ERP), must be used to determine the minimum separation required between proposed base stations and both of the following: i) co-channel public coast stations licensed under Part 80 of this chapter, ii) the coastline of any navigable waterway. Applicants whose exact ERP or HAAT are not reflected in the table must use the next highest figure shown.

REQUIRED SEPARATION IN KILOMETERS (MILES) OF BASE STATION FROM COASTLINES/PUBLIC COAST STATIONS[1]

Base Station

HAAT		ERP (watts)				
meters	feet	400	300	200	100	50
15	50	110 (69)	107 (67)	101 (63)	93 (58)	88 (55)
30	100	126 (79)	123 (77)	117 (73)	109 (68)	102 (64)
60	200	142 (89)	139 (87)	133 (83)	125 (78)	117 (73)
120	400	158 (99)	155 (97)	149 (93)	141 (88)	131 (82)

[1] The distances in the table represent the required minimum separation between any base station authorized under this section and either of the following: i) any existing co-channel public coast station or ii) the coastline of any navigable waterway.

(e) Base stations authorized under this section that are located within 240 kilometers (150 miles) of an existing, co-channel public coast station or an international border must minimize interference by reducing radiated power, decreasing antenna height, or installing directional antennas. Mobile stations must operate only within radio range of their associated base station.

3. Section 90.555 is amended by revising two of the service titles in paragraph (a) and by adding eighteen new frequencies in paragraph (b) to read as follows:

§ 90.555 Combined frequency listing.

(a) * * *

Industrial Services (I)

* * * * *

Land Transportation Services (LT)

* * * * *

(b) * * *

157.200.....	I,LT.....	See § 90.283
157.225.....	Do.....	Do.
157.250.....	Do.....	Do.
157.275.....	Do.....	Do.
157.300.....	Do.....	Do.
157.325.....	Do.....	Do.
157.350.....	Do.....	Do.
157.375.....	Do.....	Do.
157.400.....	Do.....	Do.

* * * * *

161.800.....	I,LT.....	See § 90.283
161.825.....	Do.....	Do.
161.850.....	Do.....	Do.
161.875.....	Do.....	Do.
161.900.....	Do.....	Do.
161.925.....	Do.....	Do.
161.950.....	Do.....	Do.
161.975.....	Do.....	Do.
162.000.....	Do.....	Do.

* * * * *

APPENDIX B

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals contained in this Notice. We request written public comment on the IRFA, which follows. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in paragraph 46, *supra*. The Secretary shall send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601-612 (1981).

A. Reason for Action

2. The Commission proposes to 1) reclassify VHF public coast stations as non-dominant common carriers, and thereby subject them to a streamlined regulatory scheme, and 2) authorize inter-service sharing of certain maritime frequencies in order to reduce private land mobile service congestion in certain geographical areas.

B. Objectives

3. We seek to 1) streamline the tariff filing and closure reporting requirements for VHF public coast stations, and 2) authorize sharing of frequencies between the land mobile and marine radio services in order to reduce unnecessary burdens on the public and administrative costs to the Commission and thereby increase efficiency in the these radio services and within the Commission.

C. Legal Basis

4. The proposed action is authorized under Sections 4(i) and 303(r) of the Communications Act, 47 U.S.C. §§ 154(i) and 303(r).

D. Reporting, Recordkeeping and Other Compliance Requirements

5. VHF coast stations will be subject to the streamlined regulatory scheme for non-dominant common carriers.

E. Federal Rules Which Overlap, Duplicate or Conflict with These Rules

6. None.

F. Description, Potential Impact, and Small Entities Involved

7. The proposal pertaining to the inter-service sharing of land mobile and marine radio service frequencies would increase spectrum efficiency and reduce congestion in certain areas of the country. Because coast stations are not typically owned by small businesses, the reclassification of such carriers as non-dominant will not have a significant impact on a substantial number of small businesses. The proposal, however, would eliminate for coast stations the regulatory burden of compliance with the reporting and facility requirements that currently apply to dominant common carriers.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

8. None.

APPENDIX C

Digital Selective Calling Classification Table

	Class A		Class B		Class C	VHF SC101		HF SC101	
	Tx	Rx	Tx	Rx	Tx	Tx	Rx	Tx	Rx
Format specifier:									
Distress call	X	X	X	X	X	X	X	X	X
All ships call	X	X	X	X	.	X	X	.	X
Selective individual station call	X	X	X	X	.	.	X	X	X
Selective Semi-automatic/automatic service call	X	X	X	X	.	.	.	.	.
Selective call (group of ships)	.	X	.	X	.	.	.	.	.
Selective call (ship in geographic area)	.	X	.	X	.	.	.	.	.
Vessel traffic service call	.	.	.	.	.	.	.	.	.
Numerical identification of the station (address)	X	X	X	X	.	.	.	.	.
Self-identification (automatically inserted)	X	.	X	.	X	X	.	X	.
Frequency or Channel Information (non-distress)	X	X	X	X	.	X	X	X	X
Time and position (for distress call only)	X	X	X	X	.	X	.	X	.
Ships Position Information	X	X	X	X	.	.	.	.	.
Category (call priority):									
Distress	X	X	X	X	.	X	.	X	.
Urgency	X	X	X	X	.	.	.	.	.
Safety	X	X	X	X	.	.	.	X	.
Ship's Business	X	X	.	.	.	.	.	.	.
Routine	X	X	X	X	.	X	.	X	.
(note: except for Class C, all units must be capable of receiving calls of any priority, but need not display that priority if an "X" is not marked)									
Distress categories:									
Undesignated	X	X	X	X	X	X	X	X	X
Fire, explosion	X	X	.	.	.	.	.	.	.
Collision	X	X	.	.	.	.	.	.	.
Grounding	X	X	.	.	.	.	.	.	.
Listing, in danger of capsizing	X	X	.	.	.	.	.	.	.
Sinking	X	X	.	.	.	.	.	.	.
Disabled and adrift	X	X	.	.	.	.	.	.	.
Abandoning ship	X	X	.	.	.	.	.	.	.
EPIRB emission	.	X	.	X	.	.	.	.	.

	Class A		Class B		Class C	VHF SC101		HF SC101	
	Tx	Rx	Tx	Rx	Tx	Tx	Rx	Tx	Rx
Telecommands:									
VHF FM Simplex telephony	X	X	X	X	.	X	X	.	.
VHF FM Duplex telephony	X	X	X	X	.	.	X	.	.
Polling (tracking)	X	X	.	.	.	.	.	.	.
Selection information (telephone number)	X	.	X	.	.	.	.	.	.
Unable to comply:									
No reason given	X	X	.	X	.	.	.	.	.
Congestion at maritime switching center	.	X	.	X	.	.	.	.	.
Busy	X	X	.	X	.	.	.	.	.
Queue indication	.	X	.	X	.	.	.	.	.
Station barred	.	X	.	X	.	.	.	.	.
No operator available	X	X	.	X	.	.	.	.	.
Operator temporarily unavailable	X	X	.	X	.	.	.	.	.
Equipment disabled	X	X	.	X	.	.	.	.	.
Unable to use proposed channel	X	X	.	X	.	.	.	.	.
Unable to use proposed mode	X	X	.	X	.	.	.	.	.
End of call	X	X	X	X	.	.	.	.	.
Emission or type of call:									
Single sideband telephony	X	X	X	X	.	.	.	X	X
Single sideband full carrier telephony	X	X	X	X	.	.	.	.	.
Radiotelex (SITOR) FEC	X	X	.	.	.	.	.	.	.
Radiotelex (SITOR) ARQ	X	X	.	.	.	.	.	.	.
Radiotelex (SITOR) receive only	X	X	.	.	.	.	.	.	.
F1B/J2B other than radiotelex	X	X	.	.	.	.	.	.	.
Recorder Morse Code	X	X	.	.	.	.	.	.	.
Manual Morse Code	X	X	.	.	.	.	.	.	.
Facsimile	X	X	.	.	.	.	.	.	.
Data									
CCITT V.21	X	X	.	.	.	.	.	.	.
CCITT V.22	X	X	.	.	.	.	.	.	.
CCITT V.22bis	X	X	.	.	.	.	.	.	.
CCITT V.23	X	X	.	.	.	.	.	.	.
CCITT V.26bis	X	X	.	.	.	.	.	.	.
CCITT V.26ter	X	X	.	.	.	.	.	.	.
CCITT V.27ter	X	X	.	.	.	.	.	.	.
CCITT V.32	X	X	.	.	.	.	.	.	.

	Class A		Class B		Class C	VHF SC101		HF SC101	
	Tx	Rx	Tx	Rx	Tx	Tx	Rx	Tx	Rx
Distress Acknowledgement	X	X	X	X	.	.	X	.	X
Distress Relay Acknowledgement	.	X	.	X	.	.	X	.	X
Acknowledgement, Able to Comply	X	X	.	X	.	.	.	.	.
Acknowledgement, Unable to Comply	X	X	.	X	.	.	.	.	.
Distress Relay	X	X	X	X	.	.	X	.	X
Test (MF and HF only)	X	X	X	X	.	.	.	.	.
Ship position or location registration updating	X	X	.	.	.	.	.	.	.
No Information (if no telecommand info is sent)	X	.	X	.	.	X	.	X	.
Neutral ships/aircraft in a war zone (RR Res 18)	X	X	.	.	.	.	.	.	.
Medical transport	X	X	.	.	.	.	.	.	.
Pay-phone/public call office	X	X	.	.	.	.	.	.	.
No second telecommand information	X	.	X	.	.	X	.	X	.
Power cutback to 1w on routine VHF all-ship calls	X	.	X	.	.	X	.	.	.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

FORUS FM BROADCASTING OF NEW YORK, INC. File No. BPFTB-890824TB

For Construction Permit for a New FM Booster Station (WVOA-FM1) on Channel 286 in Syracuse, New York

MEMORANDUM OPINION AND ORDER

Adopted: November 9, 1992; Released: December 2, 1992

By the Chief, Audio Services Division:

1. Now before the Division is a petition for reconsideration of the grant of the above-captioned application of Forus FM Broadcasting of New York, Inc. ("Forus"), licensee of FM Station WVOA, DeRuyter, New York. The petition was filed by WKFM-Syracuse, Inc. ("WKFM"), licensee of FM Station WKFM, Fulton, New York. Also before the Commission are related pleadings and other submissions filed by Forus and WKFM in this proceeding.

PROCEDURAL MATTERS

2. Forus filed an application to construct a new FM booster station on August 24, 1989.[1] The uncontested application was granted on November 22, 1989. WKFM sought reconsideration of the grant on December 29, 1989. It contends that the authorization should be rescinded because the proposed facility would cause interference to the off-the-air reception of WKFM in Syracuse, in violation of 47 C.F.R. § 74.1203.[2]

3. Standing to file a petition for reconsideration is conferred by § 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and by 47 C.F.R. § 1.106(b). In accordance with these provisions, a petition for reconsideration may be filed only by a party to the proceeding or, in the alternative, any person aggrieved or whose interests are adversely affected by the action taken and who, in addition, shows good reason why it was not possible to participate in the earlier stages of the proceeding. *Montgomery County Broadcasting Corporation*, 65 FCC 2d 876 (1977); *KRPL, Inc.*, 5 FCC Rcd 2823 (1990).

4. At no time prior to the grant of the construction permit application did WKFM interpose an objection. Consequently, WKFM's petition seeks reconsideration of action taken in a proceeding to which it was not a party. In order to demonstrate standing to file its petition, WKFM states that its interests would be adversely affected by the grant because of the interference that would be caused to the reception of its facilities by Forus' booster station. Moreover, WKFM submits that it had not participated earlier because the September 20, 1989 Public Notice announcing the application as tendered for filing (Report No. 14559), listed only the proposed transmitter output power of 2.5 kW, as opposed to the proposed effective radiated power ("ERP") of 8 kW. WKFM maintains that if it had been informed that the proposed booster station would operate with facilities greater than a Class A FM station, it would have timely filed a petition to deny the application.

5. We find that WKFM has failed to establish good cause for not participating earlier in the proceeding. Hence, it lacks the requisite standing to file a petition for reconsideration of the grant of the Forus application. All Commission public notices announcing the tender of FM booster stations specify the proposed transmitter output power and not the ERP. From this notice, interested parties are charged with constructive notice of the subject application. This, coupled with the fact that the public notice specified Syracuse as the proposed community of license for the booster station, meant that WKFM, by the exercise of reasonable diligence, could have determined the facts relating to the proposed station's power and the effect it would have on the operation of WKFM. *See High Country Communications*, 4 FCC Rcd 6237, n.2. (1989); *See also Rivoli Reality Co.*, 27 FCC 2d 1004 (1971).

6. Accordingly, the WKFM petition will be dismissed. However, because of the events following grant of the booster, we will consider on our own motion the policy questions presented and the appropriate action to take in such a situation.

BACKGROUND

7. While the petition for reconsideration was pending, Forus commenced equipment test operation of the booster station on March 15, 1990.[3] On March 16, 1990, WKFM requested that the booster be ordered to cease operation, pursuant to § 74.1203, because its operation was causing "destructive" interference to the reception of WKFM's signal within its 1 mV/m service area. Consequently, Forus was directed to terminate operations. Believing that the interference was a one time occurrence, Forus resumed operations on March 23, 1990. WKFM, by letter of that same date, again complained that the booster's operation was causing "destructive" interference to the reception of

[1] The purpose of the booster station was to permit Forus to simultaneously retransmit the WVOA signal to areas and populations in Syracuse that are unable to receive satisfactory service from WVOA due to terrain variations.

[2] On June 1, 1991, § 74.1203 was revised by the *Report and Order* in MM Docket No. 88-140, 5 FCC Rcd 7212 (1990) ("*Translator Report and Order* "); *modified*, 6 FCC Rcd 2334 (1991). Subsection (a) of the revised section provides, in pertinent part, that an authorized FM booster station "will not be permitted to continue to operate if it causes any actual interference to: ... the transmission of any authorized broadcast station; or ... the direct reception by the public of the off-the-air signals of any authorized broadcast station...." 47 C.F.R. § 74.1203(a) (1991).

[3] Equipment tests are authorized by 47 C.F.R. § 74.13, and may be continued as long as the construction permit shall

WKFM.[4] The Chief of the Auxiliary Services Branch directed Forus to discontinue operation of the booster station pending resolution of this matter.

8. The parties subsequently agreed to conduct joint listening tests to determine the effect of the booster station's operation on WKFM's reception in Syracuse. The listening tests, which were conducted on April 10, 1990, covered eight mutually agreed upon points in the Syracuse area. At the conclusion of the testing, the amount and the type of interference remained in dispute. However, both parties agreed that interference had resulted from operation of the booster station. Forus concluded that based on the location of the interference (the two test points closest to the transmitting site), it should have an opportunity to rectify any complaints and it expressed a willingness to resolve complaints by providing new receivers or by repositioning and/or reorienting the antennas of affected receivers. WKFM contended that its signal would receive actual off-the-air interference as a result of the booster's operation at six of the eight test sites and that it detected intermediate frequency ("IF") interference at two of the sites.

9. To further facilitate resolution of this case, the parties and their representatives met with Commission staff on December 13, 1990. As a result of this meeting, it was agreed that Forus would be permitted to commence operation pursuant to special temporary authority ("STA") in order to determine if listener complaints would result from the booster's operation and, if so, to determine Forus' ability to resolve such complaints. The STA was issued on February 20, 1991, and ran through April 25, 1991. Thereafter, both parties were to submit reports and reply comments on the results of the STA operation. On April 22, 1991, Forus requested an indefinite extension of the STA. WKFM objected to the extension noting that the temporary operation resulted in unresolved listener complaints. More specifically, WKFM argued that interference had been received by mobile receivers and that, since such listeners constituted a significant portion of its radio station's listening audience, this interference could not be ignored. Forus reiterated its intent to resolve all outstanding complaints. We denied Forus' request for an extension of its operating authority on April 25, 1991, so that we could have an opportunity to analyze the STA results without the potential for further complaints.

CONTENTIONS OF THE PARTIES

10. Both Forus and WKFM filed reports and reply comments on the results of the STA operation. WKFM reported that it had forwarded 48 listener complaints involving 51 radio receivers to Forus for resolution. Of the 48 complaints received, 19 required resolution and 29 required no further action because the complaints were either not booster related or assistance was declined. Six of the 19 complaints requiring resolution remain unresolved. These six complaints all involve mobile receivers.

11. Forus attributes the remaining unresolved complaints of interference to Front End Receiver Overload ("FERO"). It suggests that the obligations to satisfy all interference complaints imposed upon permittees for FM booster stations by § 74.1203 should be viewed the same as the obligations set out for full service FM permittees to satisfy all interference complaints within their blanketing contour. In this regard, Forus notes that under 47 C.F.R. § 73.318(b), mobile receivers, because of their "inherent transient nature," are excluded from a full service FM permittee's obligation for corrective efforts. *Report and Order* in BC Docket No. 82-186, 57 RR 2d 125, 130 (1984). Forus notes further that the Commission extended this mobile receiver exclusion to interference caused by Receiver Induced Third Order Intermodulation Effect ("RITOIE"). *See WKLX, Inc.*, 6 FCC Rcd 225, 227 (1991). Claiming that interference caused by FERO is no greater than blanketing or RITOIE, Forus argues that the principle should be extended in this instance, thereby alleviating it of having to resolve the remaining complaints of interference.

12. Alternatively, Forus views 19 cognizable complaints, out of WKFM's potential of 5,300 listeners per quarter hour, as insufficient to be considered "significant" for determining whether the booster causes "harmful interference" to WKFM's reception. *Report and Order* in MM Docket No. 87-13, 2 FCC Rcd 4625, 4629 (1987) ("*Booster Report and Order*"); *amended*, 6 FCC Rcd 6060 (1991). Forus again reiterates its willingness to continue to resolve all reports of cognizable interference complaints that are brought to its attention and to replace any affected mobile receivers. Finally, Forus believes that operation of the booster station with vertical polarization only would alleviate a great portion of the interference presently caused.

13. In response, WKFM contends that Forus has failed to resolve a significant number of complaints and, pursuant to § 74.1203, such failure should result in rescission of the construction permit. Further, WKFM argues that Forus' reliance on FERO or the Commission's blanketing rules (§ 73.318) is misplaced and should not excuse Forus' failure to resolve the remaining interference complaints. WKFM asserts that those rules apply only to full service FM stations authorized under Part 73 of the Commission's Rules (47 C.F.R. § 73), and not to secondary stations authorized under Part 74 of the rules (47 C.F.R. § 74). Additionally, WKFM insists that if Forus is willing to resolve interference complaints, it should be required to resolve those experienced by mobile receivers. Moreover, it contends that in all probability interference was greater than reported in that some listeners who received interference most likely changed stations instead of taking the effort to file complaints.

DISCUSSION

14. Section 74.1203 establishes the standards for dealing with interference to second and third adjacent channel stations which results from operation of an FM booster station.[5] *Booster Report and Order*, *supra* at 4629. The rule was revised by the Commission in the *Translator Report and Order*, *supra* n.2., and the revised subsection (a) of the rule currently reads as follows:

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remain valid.

[4] In addition to the equipment test provisions of § 74.13, short test transmissions are permitted by § 74.1203(b) during the period of suspended operation to check the efficacy of remedial measures taken by the booster operator.

[5] Prior to the *Booster Report and Order*, the provisions of § 74.1203 set out only the interference protection standard for FM translators.

> An authorized FM ... booster station will not be permitted to continue to operate if it causes *any actual interference* to ... the direct reception by the public of the off-the-air signals of any authorized broadcast station.... Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the FM ... booster station, regardless of the quality of such reception, the strength of the signal so used, or the channel on which the protected signal is transmitted.

47 C.F.R. § 74.1203(a) (1991). (emphasis added). If the interference cannot be promptly eliminated by the application of suitable techniques, § 74.1203(b) provides further that "operation of the offending FM ... booster station shall be suspended and shall not be resumed until the interference has been eliminated."

15. Thus, the provisions of § 74.1203 proscribe booster stations from causing any actual interference to the off-the-air signal of any authorized broadcast station. In that regard, actual interference occurs when broadcast operation of the FM booster station results in the receipt of listener complaints alleging the impairment of a regularly received signal. Because of the secondary nature of the FM booster service, we view this proscription to be inclusive of all types of interference, including interference resulting from FERO and IF interference.[6]

16. Six interference complaints to mobile receivers remain unresolved in this matter. We recognize that, due to their "inherent transient nature," mobile receivers have been explicitly excluded from the correction responsibility of full service FM permittees and licensees where the interference results from blanketing and RITOIE. *Report and Order* in BC Docket No. 82-186, *supra; WKLX, Inc., supra.* However, because of the secondary nature of FM boosters, and the resulting requirement that they provide interference-free service, extension of the exemption for mobile receivers applied to full service FM stations would not be appropriate to interference resulting from an FM booster station's operation.[7] The FM booster rules do not recognize the acceptability of any interference.[8]

17. Forus argues that it should be allowed to continue operation because the number of unresolved complaints does not reach the "significant number of complaints" standard established in the *Booster Report and Order, supra* at 4629.[9] Even if that standard still applies to booster stations, Forus misconstrues how the standard is to be applied. Although the "significant number of complaints" standard was not written into the rule itself, the *Booster Report and Order* stated that the existing translator interference standard, which provides that operation is permissible only where no harmful interference is caused, would be applied to boosters. It went on to state that for the purposes of this rule, harmful interference would be deemed to occur when a significant number of complaints was received. *Id.* at 4629. However, the rule itself states that once interference is deemed to occur and the translator or booster is required to cease operating, operation may not resume until the interference has been eliminated. Thus, the "significant number of complaints" standard is an initial threshold to determine when booster service must be terminated, but does not establish a standard for when service may resume. Service may be resumed only when interference has been eliminated.

18. Here, we have evidence of a recurring pattern of interference complaints, some of which have not been corrected. Based on this pattern of complaints, we have determined that there is sufficient justification to deny authority for the booster station to resume operations. This determination is not based on any specific number, but represents our assessment of the overall situation and reflects our determination that booster stations are secondary services which may not cause interference to the reception of any off-the-air broadcast station signal.

CONCLUSION

19. Based on the above, we conclude that Forus has caused interference to the reception of the broadcast station signal of WKFM and that this interference, which includes interference to mobile receivers, is inconsistent with the proscriptions of § 74.1203 of the Commission's rules. In view of the above, we conclude that Forus has failed to meet its responsibilities for continued operation of the booster station. Consequently, authority for Forus' booster station to resume operations cannot be authorized. In view of the fact that the construction permit for the booster station expired on May 22, 1991, and no application has been filed to extend the construction period or reinstate the permit (FCC Form 307), the construction permit has expired on its own terms and will, therefore, be cancelled.[10]

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[6] Thus, it is not necessary to determine whether the outstanding interference complaints result from FERO, as claimed by Forus, or from IF interference, as claimed by WKFM.

[7] In the *Booster Report and Order*, we repeatedly emphasized that FM boosters are merely fill-in facilities, secondary to full service stations, and where interference results from their operation it is the responsibility of the FM booster licensee to resolve the problem.

[8] The only exception being the limited interference caused to the signals of the primary stations being rebroadcast. *See* § 74.1203(c).

[9] In the context of the FM translator rule making proceeding, the Commission proposed revising § 74.1203 by using the "significant number of complaints" standard for determining when interference is caused to the direct reception by the public of the off-the-air signal of an authorized broadcast station. *Notice of Proposed Rule Making* in MM Docket No. 88-140, 5 FCC Rcd 2106, 2126 (1990). However, after considering the effectiveness of this standard, the Commission decided that inclusion of the significant number of complaints language in the revised rule would be inappropriate, and stated that "when convinced that a complaint or complaints of uncorrected interference are valid ... [it] will direct ... [the] station to discontinue operation." *Translator Report and Order, supra* at 7230. The Commission stated further that the judgment necessary to determine the validity of the uncorrected interference complaint or complaints would be dependent upon the individual circumstances presented in each case. Therefore, a question can be raised as to whether the "significant number of complaints" standard still applies to FM Boosters. We do not find it necessary to answer that question here.

[10] Consistent with the provisions of § 312 of the Communications Act of 1934, as amended, 47 U.S.C. § 312, we would ordinarily issue an order to show cause, where the permit has not expired, as to why the permit should not be revoked. Here, however, the construction permit has expired on its own terms justifying its cancellation. Even if Forus were to submit an application for replacement of the expired construction permit

20. Accordingly, IT IS ORDERED that the petition for reconsideration filed by WKFM-Syracuse, Inc. IS DISMISSED. IT IS FURTHER ORDERED that the construction permit granted to Forus FM Broadcasting of New York, Inc. (File No. BPFTB-890824TB) for a new FM booster station to serve Syracuse, New York IS CANCELLED and the call sign WVOA-FM1 IS DELETED.

FEDERAL COMMUNICATIONS COMMISSION

Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

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and an accompanying license application, on reconsideration, we would be unable to look favorably on the grant of such applications given Forus' inability to comply with the provisions of § 74.1203.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COMMUNICATION SERVICES
OF AMERICA, INC.,
Complainant,

v. File No. E-92-103

AMERICAN TELEPHONE
AND TELEGRAPH COMPANY,
Defendant.

ORDER

Adopted: November 23, 1992; Released: December 2, 1992

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. On August 17, 1992, Communication Services of America, Inc. (CSA) filed a formal complaint against American Telephone and Telegraph Company (AT&T). On September 28, 1992, AT&T filed its answer. On November 16, 1992, CSA moved to dismiss its complaint without prejudice. On November 19, 1992, AT&T advised that it did not oppose CSA's motion.

2. We are satisfied that dismissal of the complaint will serve the public interest by eliminating or reducing the need for further litigation and the expenditure of further time and resources of the parties and of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C.§ 154(i), and the authority delegated under Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that CSA's motion IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED WITHOUT PREJUDICE and the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints and
Investigations Branch
Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AFFINITY NETWORK
INCORPORATED,
Complainant,

v. File No. E-92-40

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY,
Defendant.

MEMORANDUM OPINION AND ORDER

Adopted: November 24, 1992; Released: December 2, 1992

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. In this order, we address a Petition for Emergency Relief (Petition) filed by Affinity Network Incorporated (ANI), a reseller of Distributed Network Services ("DNS") of American Telephone and Telegraph Company (AT&T). ANI seeks the issuance of a Commission order "preventing [AT&T] from (1) requiring that ANI pay the disputed non-DNS charges, (2) disconnecting DNS service to ANI, (3) restricting provision of new DNS or similarly tariffed service to ANI or ANI's customers, or (4) imposing new security or advance payment requirements on ANI for all tariffed services, pending hearing on ANI's amended Complaint."[1] ANI also requests that the Commission order AT&T "to (1) pay to ANI the amounts AT&T admits are due and owing ANI, and (2) place in escrow the disputed non-DNS charges ANI previously paid to AT&T and all other disputed amounts between ANI and AT&T which are held by AT&T."[2] In opposition to ANI's Petition, AT&T contends that the Communications Act and Commission's rules do not permit the stay of a carrier's duly filed and effective tariffs. AT&T further contends that, even if the four-part test governing a stay of an agency action or decision were to apply, ANI has not shown that it will suffer irreparable harm nor made the other showings required to obtain the extraordinary relief it seeks. For the reasons discussed below, we deny ANI's Petition.

2. In determining whether to grant the extraordinary remedy of a stay of its action, the Commission generally considers whether the petitioner has made a strong showing that it is likely to prevail on the merits on appeal, that irreparable injury would result absent a stay, that a stay will not substantially harm other interested parties, and that a stay will be in the public interest.[3] ANI has not shown that it would be irreparably injured by paying the disputed amounts billed to it by AT&T or that ANI cannot be made whole should it ultimately prevail on the merits of its complaint.[4] The Commission previously has stated that a customer, even a competitor, is not entitled to the self-help measure of withholding payment for tariffed services duly performed but should first pay, under protest, the amount allegedly due and then seek redress if such amount was not proper under the carrier's applicable tariffed charges and regulations.[5]

3. The Commission generally is disinclined to intervene in matters involving a carrier's decision to terminate service of a particular customer that has failed to pay legally effective and overdue tariffed charges for tariffed service that the carrier has duly rendered. Nor is the Commission inclined to second-guess a carrier's decision, with respect to a particular customer, to impose deposit, advance payment, or other security arrangements provided for in its tariff. Such determinations properly are matters within the carrier's business judgment and, as such, ordinarily will be left undisturbed, absent a showing that the carrier acted unreasonably or unduly discriminated.[6]

4. In this connection, even though *Mocatta Metals*,[7] a case on which AT&T relies, predated the Commission's decisions prescribing unlimited resale for all domestic common carrier services,[8] it nevertheless is instructive. The finding there that the carrier's termination of service for non-payment was lawful assumed that the customer had been properly billed. *Mocatta Metals*, 54 FCC 2d at 118. Carriers have been cautioned that a decision to terminate a customer's service, or their refusal to accept or to provision a customer's additional orders for service, particularly when such customer, as here, is a competitor, has potentially grave consequences and should not be taken lightly.[9] Such action would be proper, and not anti-competitive, only if a carrier had "substantially performed" and "reasonably discharged all of its obligations" under its tariff, including, but not limited to, billing accurately and granting credits called for under all of the circumstances of a

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[1] ANI Petition at 35-36. ANI filed three supplements to its Petition.

[2] *Id.* at 36.

[3] Comark Cable Fund III v. Northwestern Indiana Telephone Co., 104 FCC 2d 451, 456 (1985), *citing* Virginia Petroleum Jobbers Assoc. v. FPC, 259 F.2d 921 (D.C. Cir. 1958); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977); Big Valley Cablevision, Inc., 85 FCC 2d 973, 978 (1981).

[4] ANI's showing of supposed irreparable harm consists mostly, if not entirely, of conclusionary allegations that it will be forced to "cease operations and go out of business" if AT&T cuts off its service (Petition at 17) or "force[d] to abandon the resale market" if AT&T does not process its orders. (*Id.* at 21). In light of ANI's failure to show irreparable injury, we need not reach findings urged by AT&T that ANI also failed to meet the other criteria of the four-prong test for a stay.

[5] MCI Telecommunications Corp., 62 FCC 2d 703, 705-06 (1976) (Customer may not withhold payment of properly billed tariffed charges for voluntarily ordered services).

[6] Business Choice Network v. AT&T, _____ FCC Rcd _____ (Enf. Div. Com. Car. Bur. 1992); slip op., DA 92-1582 (released Nov. 18, 1992).

[7] *Mocatta Metals Corp.*, 54 FCC 2d 104 (ALJ R. Lozner 1975).

[8] Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261 (1976), *modified*, 62 FCC 2d 588 (1977), *aff'd sub nom.* AT&T v. FCC, 572 F.2d 17 (2d Cir. 1978), *cert. denied*, 439 U.S. 875 (1978); Resale and Shared Use of Common Carrier Domestic Switched Network Services, 83 FCC 2d 167 (1980).

[9] Business Choice Network v. AT&T, *supra*, slip op. at 3.

particular case. *Id.* at 117-18. Whether AT&T's conduct in this regard was, in fact, lawful is an issue to be determined, following further discovery, on the record in the above-captioned proceeding.[10]

5. In view of the foregoing, we conclude that ANI has not met its burden for the extraordinary relief that it seeks.

6. Accordingly, IT IS ORDERED, pursuant to authority delegated under 47 C.F.R. § 0.291, that the Petition for Emergency Relief, filed by Affinity Network Incorporated on June 10, 1992, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory A. Weiss
Deputy Chief (Operations)
Enforcement Division
Common Carrier Bureau

[10] In this connection, we note, *e.g.*, ANI's allegation that AT&T is "flouting the Commission's [resale] policies and waging a war of attrition against resellers" through its questionable practices. (Petition at viii). AT&T avers that it has complied with all requirements of its tariff, the Act and the Commission's rules and orders in providing DNS service to ANI. Verified Answer of American Telephone and Telegraph Company, filed May 26, 1992, at 8.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ATC LONG DISTANCE,
Complainant,

v.

MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY,	File No. E-91-67
NORTHWESTERN BELL TELEPHONE COMPANY, and	File No. E-91-68
PACIFIC NORTHWEST BELL TELEPHONE COMPANY,	File No. E-91-69
Defendants.	

ORDER

Adopted: November 19, 1992; Released: December 2, 1992

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. On March 19, 1991, ATC Long Distance ("ATC") filed the above-captioned formal complaints against the Mountain States Telephone and Telegraph Company, North-western Bell Telephone Company and Pacific Northwest Bell Telephone Company ("defendants") seeking damages resulting from the defendants' alleged violations of the Commission's rate of return prescription for the period January 1, 1987 through December 31, 1988. On November 12, 1992, however, ATC filed a motion seeking dismissal of the complaints stating that all claims in the actions against the defendants have been settled with the defendants admitting no liability herein.

2. We are satisfied that dismissal of the complaints will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934 as amended, 47 U.S.C. § 154(i), and the authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that ATC's Motion to Dismiss IS GRANTED, the above-captioned complaints ARE DISMISSED WITH PREJUDICE, and the proceedings ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory A. Weiss
Deputy Chief (Operations)
Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ATC LONG DISTANCE,
Complainant,

v. File No. E-91-110

GTE SOUTHWEST, INC.,
Defendant.

ORDER

Adopted: November 19, 1992; Released: December 2, 1992

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. On July 19, 1991, ATC Long Distance ("ATC") filed the above-captioned formal complaint against GTE Southwest, Inc. ("GTE") seeking damages resulting from GTE's alleged violations of the Commission's rate of return prescription for the period January 1, 1987 through December 31, 1988. On November 13, 1992, however, the parties filed a joint motion seeking dismissal of the complaint with prejudice stating that all claims in the action against GTE have been settled.

2. We are satisfied that dismissal of the complaint will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934 as amended, 47 U.S.C. § 154(i), and the authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the Joint Motion to Dismiss IS GRANTED, the above-captioned complaint IS DISMISSED WITH PREJUDICE, and the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory A. Weiss
Deputy Chief (Operations)
Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NOS COMMUNICATIONS, INC.,
Complainant,

v. File No. E-92-91

AMERICAN TELEPHONE
AND TELEGRAPH COMPANY,
Defendant.

MEMORANDUM OPINION AND ORDER

Adopted: November 23, 1992; Released: December 2, 1992

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. In this order, we address a Motion for Temporary Stay and Emergency Relief (Motion), filed by Nos Communications Inc. (NOS), a reseller of the Distributed Network Services (DNS) and Software Define Network (SDN) services of American Telephone and Telegraph Company (AT&T). NOS seeks the issuance of a Commission order "staying the effect of its policies that permit AT&T to terminate service for non-payment of charges and/or to require the payment of disputed charges, advance payment or deposits before continuing to process NOS' orders for new or changed services for its DNS resale offerings to the public, or terminate service to NOS on such basis ...."[1] In opposition to NOS' Motion, AT&T contends that the Commission's rules contemplate grant of a stay only where review or reconsideration of a Commission order could be sought and that there is no Commission rule that authorizes a stay of a carrier's duly filed and effective tariffs. AT&T contends further that under the Communications Act carriers must adhere to and apply their filed tariffs, without exception, unless a tariff is first found unlawful. AT&T also contends that, even if the four-part test governing a stay of an agency action or decision were to apply, NOS has not shown that it will suffer irreparable harm nor made the other showings required to obtain the extraordinary relief it seeks. For reasons discussed below, we deny NOS' Motion.

2. In determining whether to grant the extraordinary remedy of a stay of its action, the Commission generally considers whether the petitioner has made a strong showing that it is likely to prevail on the merits on appeal, that irreparable injury would result absent a stay, a stay will not substantially harm other interested parties, and that a stay will be in the public interest.[2] NOS has not shown that it would be irreparably injured by paying the disputed amounts billed to it by AT&T or that it cannot be made whole should it ultimately prevail on the merits of its complaint.[3] The Commission previously has stated that a customer, even a competitor, is not entitled to the self-help measure of withholding payment for tariffed services duly performed but should first pay, under protest, the amount allegedly due and then seek redress if such amount was not proper under the carrier's applicable tariffed charges and regulations.[4]

3. The Commission generally is disinclined to intervene in matters involving a carrier's decision to terminate service of a particular customer that has failed to pay legally effective and overdue tariffed charges for tariffed service that the carrier has duly rendered. Nor is the Commission inclined to second guess a carrier's decision, with respect to a particular customer, to impose deposit, advance payment or other security arrangements provided for in its tariff. Such determinations properly are matters within the carrier's business judgment and, as such, ordinarily will be left undisturbed, absent a showing that the carrier acted unreasonably or unduly discriminated.[5]

4. In this connection, even though *Mocatta Metals*,[6] a case on which AT&T relies, predated the Commission's decisions prescribing unlimited resale for all domestic common carrier services,[7] it nevertheless is instructive. The finding there that the carrier's termination of service for non-payment was lawful assumed that the customer had been properly billed. *Mocatta Metals*, 54 FCC 2d at 118. Carriers have been cautioned that a decision to terminate a customer's service, or their refusal to accept or to provision a customer's additional orders for service, particularly when such customer, as here, is a competitor, has grave consequences and should not be taken lightly.[8] Such action would be proper, and not anticompetitive, only if a carrier had "substantially performed" and "reasonably discharged all of its obligations" under its tariff, including, but not limited to, billing accurately and granting credits called for under all of the circumstances of a particular case. *Id.* at 117-18. Whether AT&T's conduct in this regard was, in

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[1] Motion at 9.

[2] Comark Cable Fund III v. Northwestern Indiana Telephone Co., 104 FCC 2d 451, 456 (1985), *citing* Virginia Petroleum Jobbers Assoc. v. FPC, 259 F.2d 921 (D.C. Cir. 1958); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977); Big Valley Cablevision, Inc., 85 FCC 2d 973, 978 (1981).

[3] NOS' showing of supposed irreparable harm consists mostly, if not entirely, of conclusionary allegations that it will be "eliminated from the marketplace" or put out of business if AT&T cuts off its service (Motion at 3,4) or "forced to abandon the field" if AT&T does not process its orders. (*Id.* at 8,9). In light of NOS' failure to show irreparable injury, we need not reach findings urged by AT&T that NOS also failed to meet any of the other criteria of the four-prong test for a stay.

[4] MCI Telecommunications Corp., 62 FCC 2d 703, 705-06 (1976) (Customer may not withhold payment of properly billed tariffed charges for voluntarily ordered services).

[5] Business Choice Network v. AT&T, _____ FCC Rcd _____ (Enf.Div.Com.Car.Bur.1992); slip op., DA 92-1582 (released Nov. 18, 1992).

[6] Mocatta Metals Corp., 54 FCC 2d 104 (ALJ R. Lozner 1975).

[7] Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261 (1976), *modified*, 62 FCC 2d 588 (1977), *aff'd sub nom.* AT&T v. FCC, 572 F.2d 17 (2d Cir. 1978), *cert. denied*, 439 U.S. 875 (1978); Resale and Shared Use of Common Carrier Domestic Switched Network Services, 83 FCC 2d 167 (1980).

[8] Business Choice Network v. AT&T, *supra*, slip op. at 3.

fact, lawful is an issue to be determined, following further discovery, on the record in the above-captioned proceeding.[9]

5. In view of the foregoing, we conclude that NOS has not met its burden for the extraordinary relief that it seeks.

6. Accordingly, IT IS ORDERED, pursuant to authority delegated under 47 C.F.R. § 0.291, that the Motion For Temporary Stay and Emergency Relief, filed by Nos Communications, Inc. on or about June 18, 1992, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory A. Weiss
Deputy Chief (Operations)
Enforcement Division
Common Carrier Bureau

[9] In this connection, we note, *e.g.*, NOS' allegation that it "has been victimized by AT&T's obdurate refusal to promptly, properly, and accurately provision NOS' SDN orders." Formal Complaint and Request for Emergency Relief, filed June 18, 1992, at 2, an allegation that AT&T has denied. Verified Answer of American Telephone and Telegraph Company, filed August 5, 1992 (Answer) at 2. AT&T avers that it has complied with all requirements of the Act and the Commission's rules and orders and that it "has provided timely and high quality service and billing to NOS at all times." Answer at ii.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
November 19, 1992

Released: December 2, 1992

Mr. Michael R. Birdsill 8210-AJZ
Licensee, Radio Station KCFM(FM) 92100534
P.O. Box 1921
Chico, California 95927

Dear Mr. Birdsill:

This is in reference to your letter seeking clarification of the "meaningful management and staff presence" requirement of the main studio rule, 47 C.F.R. § 73.1125, as it applies to local marketing agreements ("LMA's"). On September 3, 1992, the Commission adopted a clarification of the main studio requirement, ruling, among other things, that management personnel must report to work at the main studio on a daily basis, spend a substantial amount of time there and use the studio as a "home base." *Jones Eastern of the Outer Banks, Inc. (Clarification)*, FCC 92-426, released October 14, 1992. I have enclosed a copy of this decision.

In your letter, you inquire whether a brokered licensee may share staff with a brokering licensee with which it shares a main studio. We understand your question to concern only staff, not management, as shared management could violate the Commission's cross-interest policy. While the *Jones Eastern* decision did not address your question directly, the Commission did state: "To the extent that the staff person may fully perform its station functions with time to spare, and coverage of the main studio permits, that person may also take on responsibilities for another business, as long as the main studio remains attended during normal business hours." *Jones Eastern, supra*, at 6. This statement would allow a licensee to share a staff person with another business (albeit another station), as long as the management person remains a full-time employee of the brokered station. The foregoing does not address the question of what, if any, effect this mode of operation would have on a licensee's renewal expectancy.

I trust the foregoing is responsive to your inquiry.

Sincerely,

Edythe Wise, Chief
Complaints & Investigations Branch
Enforcement Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Application of

Friendly Community Television Services — File No. 4681-CM-P-83

For Authority to Construct and Operate a Multichannel Multipoint Distribution Service Station on the E-group channels at Victoria, Texas

ORDER ON RECONSIDERATION

Adopted: November 25, 1992; Released: December 3, 1992

By the Chief, Domestic Facilities Division:

1. *Introduction.* Friendly Community Television Services (Friendly) filed a petition for reconsideration of the determination by the Domestic Facilities Division (Division) that its above-referenced application to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the E-group channels at Victoria, Texas was unacceptable for filing.

2. *Division Return.* The Division determined that Friendly's application was unacceptable for filing because it lacked the required submissions to demonstrate Federal Aviation Administration (FAA) air navigation hazard program compliance, pursuant to 47 C.F.R. Secs. 17.4 and 21.15(d). The omission of this information in Friendly's application rendered the application incomplete and not in a "condition acceptable for filing." Therefore, Friendly's application was returned as unacceptable for filing.

3. *Petition.* On reconsideration, the applicant states that when it filed its application, it assumed mistakenly that there was an existing tower structure at the site proposed for its transmitting antenna and also assumed mistakenly that the pre-existing tower had already received FAA approval, with previously-assigned tower markings and lighting. "Friendly does not dispute that no tower exists today at the coordinates specified in its original application" or that the owner's tower is located currently at different coordinates. ... Friendly has been unable to determine why the coordinates specified in its application do not comport with the records maintained by the Antenna Survey Branch." Petition at 3. Friendly further states, "[i]t is axiomatic that no applicant should be subject to the most severe punishment in the Commission's arsenal -- dismissal of its application -- where the applicant has relied in good faith upon professional assistance." *Id.* Friendly also argues that the Division staff should have allowed it to correct the FAA defect in its MMDS application, by sending Friendly a deficiency letter or issuing an authorization with an express condition requiring Friendly to cure the FAA defect. "Had Friendly known that its application would be returned by the Commission because of FAA clearance problems, it could have expedited the filing of an amendment to relocate to a FAA approved site." Petition at 4. Finally, Friendly argues that its application should be reinstated because it has signed an agreement with a customer.

4. *Discussion.* The arguments presented by Friendly are without merit. Prior to the filing of Friendly's MMDS application, the Commission adopted 47 C.F.R. Sec. 21.15(d) to effectuate its policy of compliance with the FAA air navigation hazard compliance program. Section 21.15(d) at that time stated, *inter alia:*

> Each application proposing a new ... antenna structure for a station ... shall include a statement indicating whether or not notification of the ... FAA is required. If notification is required the applicant should include with the application a copy of the FAA study regarding potential hazard to aviation. If the applicant has not received the FAA study, the application should include the name used in the FAA notification, the location of the FAA regional office involved and the date of the notification. [Complete information as to rules concerning the construction, marking and lighting of antenna structures is contained in Part 17 of this chapter. See also Sec. 21.111 if the structure is used by more than one station.]

In addition, at the time Friendly's application was filed, 47 C.F.R. Sec. 21.13(a) provided, *inter alia:*

> Each application for a construction [authorization] ... shall:
>
> ...
>
> (2) Demonstrate the applicant's legal, financial, technical, and other qualifications to be a permittee or licensee;
>
> (3) Submit the information required by the Commission's Rules, requests, and application forms;
>
> ...
>
> (6) Show compliance with the special requirements applicable to each radio service and make all special showings that may be applicable ... .

The Commission also stated at 47 C.F.R. Sec. 21.20(a) the consequences for failing to comply with the requirements of Sections 21.15(d) and 21.13(a) by providing, *inter alia:*

> Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if: (1) the application is defective with respect to completeness of answers to questions, informational showings, execution, or other matters of a formal character; or (2) the application does not substantially comply with the Commission's rules, regulations, specific requests for additional information, or other requirements.

5. The FAA notification requirement is a significant requirement to insure that each MMDS station creates no hazard to air navigation by construction or operation of its transmitting antenna. The interest furthered by requiring MMDS applicants to comply with Section 21.15(d) is public safety of life and property.

6. Friendly's reliance on its engineering firm is not a mitigating factor. "Parties are charged with knowledge of and are bound by statutes and regulations despite reliance to their detriment upon incorrect information received from third parties. *Cf. Rosner v. Secretary of Health, Ed. and Welfare*, 306 F.Supp. 853, 855 (S.D. Fla. 1970). [Friendly] is ultimately responsible for his application and for ensuring that it conforms to Commission rules. *See [Bruce M.] Schorsten*, 2 FCC Rcd [4409,] ... 5422 n.3 (Comm. Car. Bur. 1987)." *Ronald F. Trinchitella*, 4 FCC Rcd 6360 (1989); *see Digital Paging Systems, Inc.*, 2 FCC Rcd 1523, 1524 (Comm. Car. Bur. 1987).

7. Each MMDS applicant is required to demonstrate its technical qualifications to be an MMDS licensee. 47 C.F.R. Sec. 21.13. Friendly's failure to notify the FAA and to submit to the FCC the FAA notification information required by Section 21.15(d) renders its application incomplete and unacceptable for filing in accordance with 47 C.F.R. Sec. 21.20(a). Therefore, Friendly's application was not in a "condition acceptable for filing" on the filing date, and was therefore unacceptable for filing.[1]

8. In its application, Friendly, through an officer, stated it was familiar with the Commission's rules relevant to MMDS in item 33 of FCC Form 435 and the applicant's certification, item 36 of FCC Form 435. Any applicant who "either ignores or fails to understand clear and valid rules of the Commission respecting the requirements for an application assumes the risk that the application will not be acceptable for filing." *Ranger v. FCC*, 294 F.2d 240, 242 (1961). Friendly's failure to comprehend and comply with the filing standards all MMDS applicants are required to meet cannot be used to avoid the consequences of its failure.[2]

9. *Conclusion and Ordering Clause.* Having carefully considered all of the arguments and evidence submitted by Friendly, we find that it was proper for the Division to return Friendly's application as unacceptable for filing. Accordingly, Friendly's request for reconsideration and reinstatement of the above-referenced application IS DENIED. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. *See* 47 C.F.R. Secs. 1.4(b), 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

[1] *See Amendment of Parts 1 and 21 of the Commission's Rules and Regulations Applicable to the Domestic Public Radio Services (Other than Maritime)*, 60 FCC 2d 549 (1976); *see also Revision of Part 21 of The Commission's Rules*, 2 FCC Rcd 5713 (1987).

[2] We reject Friendly's contention that it should be permitted to file curative amendments and have its application reinstated, *nunc pro tunc*, for further processing. We believe that the Division's initial return of the above-referenced Friendly application as unacceptable for filing was correct, that Friendly has not demonstrated any other reasons to support reconsideration, and thus, *nunc pro tunc* reinstatement is unwarranted.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Application of

National Wireless Cable — File No. 10955-CM-P-83

For Authority to Construct and Operate a Multichannel Multipoint Distribution Service station on the E-group channels at Bremerton, Washington

ORDER ON RECONSIDERATION

Adopted: November 25, 1992; Released: December 3, 1992

By the Chief, Domestic Facilities Division:

1. *Introduction.* National Wireless Cable (National) requested a set aside, pursuant to Section 1.113(a), of the dismissal by the Domestic Facilities Division (Division) on delegated authority of its application for authority to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the E-group channels at Bremerton, Washington, and requested reinstatement of its application.[1]

2. *Background.* As the result of a Commission lottery, the above-referenced application was selected for qualification review. Subsequently, Division staff initiated a qualification review of this application pursuant to 47 C.F.R. Sec. 21.32. Upon examination, the application was found to contain several deficiencies that precluded the staff from making a finding that National was legally, technically, financially, and otherwise qualified to be a licensee, and that a grant of its application would serve the public interest. National was notified by letter of these deficiencies and provided an opportunity to cure them within thirty (30) days of the date of each letter.[2] National was also advised in the deficiency letter that failure to file the requested information within thirty days could result in the dismissal of its application.

3. National provided a programmer non-affiliation statement, but provided none of the rest of the requested information. Pursuant to Sections 21.13(c), 21.20(d) and 21.28(d) of the Rules, the Division dismissed by letter National's application for its failure to comply completely in a timely manner with the Division's request for information. While admitting that all of the requested information had not been submitted, National, on reconsideration, states: "At the time the responses were initially due, [National] was not represented by counsel and was unable to devote sufficient time to the preparation of a response because of the press of other business." National's Letter at 2.

4. *Discussion.* As of the date of the Division's dismissal action, National still had not submitted all of the information necessary for evaluation of its qualifications to be an MMDS licensee. For example, National had not submitted a lease, lease option agreement, or other "concrete evidence" to demonstrate the availability of its proposed transmitter site, as required by Sec. 21.15(a).[3] For MMDS applications subject to the Commission's lottery proceedings, a demonstration of reasonable assurance of site availability is sufficient prior to the lottery. However, once the lottery is held, a fully-executed lease, lease option agreement, or other concrete evidence of site availability must be submitted.[4] *Video/Multipoint, Inc.*, 6 FCC Rcd 5125, 5126 (Comm. Car. Bur. 1991).

5. Also, National failed to submit the information necessary for compliance with FCC and FAA regulations concerning avoidance of navigation hazards, as required by Secs. 17.4(f) and 21.15(d). *See also* 47 C.F.R. Sec. 21.15(c). In addition, National failed to comply with the request to submit the Section 21.902(i) ITFS interference analysis for its application. At the time of the dismissal, Section 21.902(i) required MMDS applicants to submit, prior to receiving construction authorization, and at such time as the Commission requested it, an analysis demonstrating that the proposed MMDS facilities would not cause harmful interference to existing cochannel or adjacent-channel ITFS stations within 50 miles of the MMDS station's proposed transmitter site, or alternatively, a consent statement from the ITFS licensee. By the express language of this rule, an MMDS applicant must submit an ITFS interference analysis at such time as the Commission requests it. Despite the specific request that this analysis be submitted by a specified date, National failed to do so. *See Fortuna Systems Corp.*, 3 FCC Rcd 5122, 5123 (Comm. Car. Bur. 1988).

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[1] National may not request a set aside, pursuant to Section 1.113(a), as a means to circumvent the requirements for filing petitions for reconsideration, pursuant to Section 1.106. A set aside, pursuant to Section 1.113(a), must be made on the delegated authority's own motion.

[2] The deficiencies cited were the absence of: (1) a lease or lease option agreement, pursuant to 47 C.F.R. Sec. 21.15(a); (2) antenna structure height information for Federal Aviation Administration (FAA) air navigation hazard program compliance, as required by 47 C.F.R. Secs. 17.4(f) and 21.15(d); (3) a programmer non-affiliation statement, as required by 47 C.F.R. Sec. 21.900; and (4) an analysis demonstrating a lack of harmful interference to Instructional Television Fixed Service (ITFS) licensees pursuant to 47 C.F.R. Sec. 21.902(i).

[3] Even if National was not required to comply with the requirements of Section 21.15(a), it was required, pursuant to Sec. 21.13(c), to submit a lease or option agreement after the Division directed it to do so. Section 21.13(a) provides *inter alia:* "In addition to the general application requirements of Secs. 21.13 through 21.17 of this part, applicants shall submit any additional documents, exhibits, or signed written statements of fact: ... (2) As the Commission, at any time after the filing of an application ... may require from any applicant ... to enable it to determine whether a radio authorization should be granted...."

[4] *Revision of Part 21 of The Commission's Rules*, 2 FCC Rcd 5713, 5721 (1987) (Where there is a lottery "it shall be sufficient if the application adequately demonstrates reasonable assurance of the availability of the site. A license will not be granted, however, until concrete evidence of site availability is submitted." *Id.*)

6. National had a duty to submit curative amendments to its application within thirty days of the Division's written request, or to obtain an extension of time.[5] *VisionAire, Inc.*, 5 FCC Rcd 1952 (Comm. Car. Bur. 1990). Its failure to submit curative amendments for more than eight (8) months substantially impeded the expeditious offering of MMDS at Bremerton. Also, National's failure to respond in a timely manner to the Division's request for information hindered the discharge of the Commission's statutorily-imposed duties under Title III of the Communication's Act. *By Direction of the Commission Letter to US West*, 60 Rad. Reg. 2d 8, 9 (1985). At the time of the dismissal, National had not provided the required ITFS interference analysis, the required FAA information, and the required lease or lease option agreement. The Division was not in a position, therefore, to complete evaluation of National's MMDS station proposal and its qualifications to be an MMDS licensee. *Multi-Point Television Distributors, Inc.*, 5 FCC Rcd 519, 520 (Comm. Car. Bur. 1990).

7. *Conclusion and Ordering Clause.* Having carefully considered the arguments and evidence presented, we find that the dismissal of this application for failure to comply with the Division's requests for information was proper, reconsideration of the action is not warranted, and reinstatement of the application is not justified. Accordingly, IT IS ORDERED that the petition for reconsideration and reinstatement filed by National Wireless Cable regarding the above-referenced MMDS application IS DENIED. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. *See* 47 C.F.R. Secs. 1.4(b), 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

[5] One extension of time to respond was granted to National, but it expired approximately six (6) months prior to dismissal.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Application of

VisionAire Incorporated — File Nos. 15459-CM-P-83 and 15504-CM-P-83

For Authority to Construct and Operate a Multichannel Multipoint Distribution Service station on E-group channels at Danville, Virginia and Key West, Florida

ORDER ON RECONSIDERATION

Adopted: November 25, 1992; Released: December 3, 1992

By the Chief, Domestic Facilities Division:

1. *Introduction.* VisionAire Incorporated (VisionAire) filed petitions for reconsideration of the dismissal by the Domestic Facilities Division (Division) on delegated authority of its applications for authority to construct and operate Multichannel Multipoint Distribution Service (MMDS) stations on the E-group channels at Danville, Virginia and Key West, Florida, and requested reinstatement of its applications.

2. *Background.* As the result of Commission lotteries, the above-referenced applications were selected for qualification review. Subsequently, Division staff initiated a qualification review of this application, pursuant to 47 C.F.R. Sec. 21.32. Upon examination, the applications were found to contain several deficiencies that precluded the staff from making a finding that VisionAire was legally, technically, financially, and otherwise qualified to be a licensee, and that a grant of its application would serve the public interest. VisionAire was notified by separate letters of these deficiencies and provided an opportunity to cure them within thirty (30) days of the dates of the letters.[1] VisionAire was also advised in the deficiency letters that failure to file the requested information within thirty days could result in the dismissal of its application.

3. VisionAire provided some, but not all, of the requested information. Pursuant to Sections 21.13(c), 21.20(d) and 21.28(d) of the Rules, the Division dismissed by letter VisionAire's applications for its failure to comply completely in a timely manner with the Division's request for information. On reconsideration, VisionAire argues that: (1) with regard to its Danville MMDS application, sending a letter to an ITFS applicant's attorney should be considered a substitute for an engineering analysis demonstrating a lack of harmful interference to ITFS licensees; (2) with regard to its Key West MMDS application, a statement, by a paralegal of the law firm that represents it in these matters, that a list of ITFS stations which does not identify any ITFS location as "Key West" should be considered a substitute for the analysis required by Section 21.902(i); and (3) a reasonable assurance statement of site availability should be considered as a substitute for the required lease or lease option agreement.[2]

4. *Discussion.* As of the date of the Division's dismissal actions, VisionAire had submitted some, but not all, of the information necessary for evaluation of its qualifications to be an MMDS licensee. For example, VisionAire had not submitted a lease, lease option agreement, or other "concrete evidence" to demonstrate the availability of its proposed transmitter site as required by 47 C.F.R. Sec. 21.15(a).[3] For MMDS applications subject to the Commission's lottery proceedings, a demonstration of reasonable assurance of site availability is sufficient prior to the lottery. However, once the lottery is held, a fully-executed lease, option agreement, or other concrete evidence of site availability must be submitted.[4] *Video/Multipoint, Inc.*, 6 FCC Rcd 5125, 5126 (Comm. Car. Bur. 1991). The Commission has specifically rejected the concept advanced by VisionAire that a reasonable assurance statement is a substitute for a lease or lease option agreement. *Part 21 Revision Order*, 2 FCC Rcd 5720-21.

5. Also, VisionAire failed to comply with the Division's requests to submit the Section 21.902(i) ITFS interference analyses. At the time of the dismissals, Section 21.902(i) required MMDS applicants to submit, prior to receiving construction authorization, and at such time as the Commission requested it, an analysis demonstrating that the proposed MMDS facilities would not cause harmful inter-

[1] The deficiencies cited in the letters were the absence of: (1) a lease or lease option agreement, pursuant to 47 C.F.R. Sec. 21.15(a); (2) correct antenna structure height information for Federal Aviation Administration (FAA) air navigation hazard program compliance, as required by 47 C.F.R. Secs. 17.4(f) and 21.15(d); (3) current financial qualification data, pursuant to 47 C.F.R. Sec. 21.17; and (4) a non-affiliation statement, pursuant to 47 C.F.R. Sec. 21.900; and (5) an analysis demonstrating a lack of harmful interference to Instructional Television Fixed Service (ITFS) licensees, pursuant to 47 C.F.R. Sec. 21.902(i).

[2] More than three years after the reconsideration petition was due, VisionAire filed a supplement to its Key West petition, arguing that the filing of requested information approximately four and 1/2 years after it was due warranted consideration of the petition, as supplemented, to be treated as new circumstances under Section 1.106(f) of the Rules. We disagree. If true, there would be no deadline for filing a reconsideration petition concerning an application, because the applicant would be able to submit repeatedly additional information. We do note, however, that VisionAire's Key West application was not dismissed because it was unacceptable for filing, but due to its failure to comply with Sections 21.12(c), 21.20(d) and 21.28(d). In addition, VisionAire fails to justify, as required by Sec. 21.19, a waiver of these three rules.

[3] Even if VisionAire was not required to comply with the requirements of Section 21.15(a), it was required under Sec. 21.13(c) to submit a lease or option agreement after the Division directed it to do so. Section 21.13(a) provides, *inter alia*,: "In addition to the general application requirements of Secs. 21.13 through 21.17 of this part, applicants shall submit any additional documents, exhibits, or signed written statements of fact: ... (2) As the Commission, at any time after the filing of an application ... may require from any applicant ... to enable it to determine whether a radio authorization should be granted...."

[4] *Revision of Part 21 of The Commission's Rules*, 2 FCC Rcd 5713, 5721 (1987) (hereinafter cited as *Part 21 Revision Order*) (Where there is a lottery "it shall be sufficient if the application adequately demonstrates reasonable assurance of the availability of the site. A license will not be granted, however, until concrete evidence of site availability is submitted." *Id.*)

ference to existing cochannel or adjacent-channel ITFS stations within 50 miles of the MMDS station's proposed transmitter site, or alternatively, a consent statement from the ITFS licensee. By the express language of this rule, an MMDS applicant must submit an ITFS interference analysis at such time as the Commission requests it. Despite the specific request that this analysis be submitted by a specified date, VisionAire failed to do so. *See Fortuna Systems Corp.*, 3 FCC Rcd 5122, 5123 (Comm. Car. Bur. 1988). Our records reflect that the applicant never represented that it had conducted a study to determine if there are any *licensed* ITFS stations within 50 miles of VisionAire's proposed transmitter site at Danville. The Commission's rules are quite specific as to the technical showing which must be made by MMDS applicants with regard to grandfathered ITFS stations. 47 C.F.R. Secs. 21.902(a)-(c)(2), 21.901(d), 21.902(f)-(g), and 21.902(i). VisionAire's assertions, that a letter to an attorney representing an ITFS *applicant*, or that the submission of a list of ITFS stations by a paralegal complies with the technical showings required by Commission rules, are incorrect. *MMDS Allocation Order*, 94 FCC 2d 1204 (1983).

6. VisionAire had a duty to submit curative amendments to its applications within thirty days of the Division's written request, or to obtain an extension of time.[5] *VisionAire, Inc.*, 5 FCC Rcd 1952 (Comm. Car. Bur. 1990). Its failure to submit curative amendments for almost 30 months (Danville) and 19 months (Key West) substantially impeded the expeditious offering of MMDS at Danville and Key West. Also, VisionAire's failure to respond in a timely manner to the Division's requests for information hindered the discharge of the Commission's statutorily-imposed duties under Title III of the Communication's Act. *By Direction of the Commission Letter to US West*, 60 Rad. Reg. 2d 8, 9 (1985). At the time of the dismissals, VisionAire had not provided the required ITFS interference analyses and the required leases or option agreements. The Division was not in a position, therefore, to complete evaluation of VisionAire's MMDS station proposals and its qualifications to be an MMDS licensee. *Multi-Point Television Distributors, Inc.*, 5 FCC Rcd 519, 520 (Comm. Car. Bur. 1990).

7. *Conclusion and Ordering Clause.* Having carefully considered all of the arguments and evidence presented, we find that dismissal of these applications for failure to comply with the Division's requests for information was proper, reconsideration of that action is not warranted, and reinstatement of the applications is not justified. Accordingly, IT IS ORDERED that the petitions for reconsideration filed by VisionAire Incorporated regarding the above-referenced MMDS applications ARE DENIED. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. *See* 47 C.F.R. Secs. 1.4(b), 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

[5] VisionAire requested an extension of time to submit some specified information for its Danville application. The requested period expired 27 months before the date of the Danville dismissal letter.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Application of

David A. Hernandez, Linda Webb and Ron Blasquez — File No. 11223-CM-P-83

For Authority to Construct and Operate a Multichannel Multipoint Distribution Service station on the F-group channels at Santa Barbara, California

ORDER ON RECONSIDERATION

Adopted: November 25, 1992; Released: December 3, 1992

By the Chief, Domestic Facilities Division:

1. *Introduction.* David A. Hernandez, Linda Webb, and Ron Blasquez (collectively referred to as Hernandez) filed a petition for reconsideration of the dismissal by the Domestic Facilities Division (Division) on delegated authority of the Hernandez application for authority to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the F-group channels at Santa Barbara, California, and requested reinstatement of the Hernandez application.

2. *Background.* As the result of a Commission lottery, the above-referenced application was selected for qualification review. Subsequently, Division staff initiated a qualification review of the application pursuant to 47 C.F.R. Sec. 21.32. Upon examination, the application was found to contain several deficiencies that precluded the staff from making a finding that Hernandez was legally, technically, financially, and otherwise qualified to be a licensee, and that a grant of the Hernandez application would serve the public interest. Hernandez was notified by letter of these deficiencies and provided an opportunity to cure them within thirty (30) days of the date of the letter.[1] Hernandez was also advised in the deficiency letter that failure to file the requested information within thirty days could result in the dismissal of the Hernandez application.

3. Hernandez provided some, but not all, of the requested information. Pursuant to Sections 21.13(c), 21.20(d) and 21.28(d) of the rules, the Division dismissed the Hernandez application for failure to comply completely in a timely manner with the Division's request for information. On reconsideration, Hernandez argues that the application should be reinstated because: (1) it was not required to file an ITFS interference analysis until some future, unspecified date;[2] and (2) it filed an ITFS interference analysis after the application was dismissed.

4. *Discussion.* After an extension was granted and as of the date of the Division's dismissal action, Hernandez had submitted some, but not all, of the information necessary for evaluation of its qualifications to be an MMDS licensee. Hernandez failed to comply with the request to submit the Section 21.902(i) ITFS interference analysis for the Hernandez application.[3] At the time of the dismissal, Section 21.902(i) required MMDS applicants to submit, prior to receiving construction authorization, and at such time as the Commission requested it, an analysis demonstrating that the proposed MMDS facilities would not cause harmful interference to existing cochannel or adjacent-channel ITFS stations within 50 miles of the MMDS station's proposed transmitter site, or alternatively, a consent statement from the ITFS licensee. By the express language of this rule, an MMDS applicant must submit an ITFS interference analysis at such time as the Commission requests it.[4] Despite the specific request that this analysis be submitted by a specified date, Hernandez failed to do so. *See Fortuna Systems Corp.*, 3 FCC Rcd 5122, 5123 (Comm. Car. Bur. 1988). The claim by Hernandez in its reconsideration petition that the deficiency letter failed to request an ITFS interference analysis is negated by the applicants' statement in a submission in which other requested information was supplied: "The applicant has been advised by its technical consultants that additional time will be needed to complete the interference analysis required by Section 21.902(i). This analysis will be filed as soon as it is completed." We believe this statement acknowledges that Hernandez understood that the Division had requested that the interference analysis be submitted by a specified date. Hernandez failed to comply with this request.

5. Hernandez had a duty to submit curative amendments to its application within thirty days of the Division's writ-

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[1] The deficiencies cited in the letter were the absence of: (1) a lease or option agreement, pursuant to 47 C.F.R. Sec. 21.15(a); (2) correct data for Federal Aviation Administration (FAA) air navigation hazard program compliance, as required by 47 C.F.R. Secs. 17.4(f) and 21.15(d); (3) current financial qualification data, pursuant to 47 C.F.R. Sec. 21.17; and (4) an Instructional Television Fixed Service (ITFS) interference analysis, pursuant to 47 C.F.R. Sec. 21.902(i).

[2] "The Division letter did not request the interference analysis, it merely reminded [Hernandez] that [the analysis must] be submitted prior to grant." Petition at 6.

[3] Even if Hernandez was not required to comply with the requirements of Section 21.902(i), it was required, pursuant to 47 C.F.R. Sec. 21.13(c), to submit an ITFS interference analysis after the Division directed it to do so. Section 21.13(a) provides, *inter alia:* "In addition to the general application requirements of Secs. 21.13 through 21.17 of this part, applicants shall submit any additional documents, exhibits, or signed written statements of fact: ... (2) As the Commission, at any time after the filing of an application ... may require from any applicant ... to enable it to determine whether a radio authorization should be granted...."

[4] Hernandez fails to justify, as required by Section 21.19 a waiver of the Section 21.902(i) requirement that an ITFS interference analysis be submitted at the time it was requested. One underlying purpose for requiring that such a analysis be submitted when requested is to allow for efficient processing of MMDS applications. It is not possible to process applications efficiently if the Division must repeatedly request the information from applicants. It was not possible to process the Hernandez application efficiently as evidenced by the more than 46 month delay period between the date of the deficiency letter and dismissal.

ten request, or to obtain an extension of time.[5] *VisionAire, Inc.*, 5 FCC Rcd 1952 (Comm. Car. Bur. 1990). Its failures to submit curative amendments for more than 46 months substantially impeded the expeditious offering of MMDS at Santa Barbara. *Video/Multipoint, Inc.*, 6 FCC Rcd 5215, 5216 (Comm. Car. Bur. 1991). Also, Hernandez' failure to respond in a timely manner to the Division's request for information hindered the discharge of the Commission's statutorily-imposed duties under Title III of the Communication's Act. *By Direction of the Commission Letter to US West*, 60 Rad. Reg. 2d 8, 9 (1985). At the time of the dismissal, Hernandez had not provided the required ITFS interference analysis. The Division was not in a position, therefore, to complete evaluation of Hernandez' MMDS station proposal and its qualifications to be an MMDS licensee. *Multi-Point Television Distributors, Inc.*, 5 FCC Rcd 519, 520 (Comm. Car. Bur. 1990).

6. *Conclusion.* Having carefully considered the arguments and evidence presented, we find that the dismissal of this application for failure to comply with the Division's request for information was proper, reconsideration of the action is not warranted, and reinstatement of the application is not justified. Accordingly, IT IS ORDERED that the petition for reconsideration filed by David A. Hernandez, Linda Webb, and Ron Blasquez regarding the above-referenced MMDS application IS DENIED. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. *See* 47 C.F.R. Secs. 1.4(b), 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

[5] Hernandez' extension expired more than 44 months prior to dismissal.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Applications of

Line of Site, Inc. File Nos. 7182-CM-P-83
and 7213-CM-P-83

For Authority to Construct and Operate
Multichannel Multipoint Distribution
Service stations on the E-group
channels at Portsmouth, New Hampshire
and Steubenville, Ohio

ORDER ON RECONSIDERATION

Adopted: November 25, 1992; Released: December 3, 1992

By the Chief, Domestic Facilities Division:

1. *Introduction.* Line of Site, Inc. (Line) filed petitions for reconsideration of the dismissals by the Domestic Facilities Division (Division) on delegated authority of its applications for authority to construct and operate Multichannel Multipoint Distribution Service (MMDS) stations on the E-group channels at Portsmouth, New Hampshire and Steubenville, Ohio, and requested reinstatement of its applications.

2. *Background.* As the result of Commission lotteries, the above-referenced applications were selected for qualification review. Subsequently, Division staff initiated qualification review of the applications, pursuant to 47 C.F.R. Sec. 21.32. Upon examination, the applications were found to contain several deficiencies that precluded the staff from making a finding that Line was legally, technically, financially, and otherwise qualified to be a licensee, and that a grant of its applications would serve the public interest. Line was notified by separate letters of these deficiencies and provided an opportunity to cure them within thirty (30) days of the dates of each letter.[1] Line was also advised in the deficiency letters that failure to file the requested information within thirty days could result in the dismissal of its applications.

3. Line provided some, but not all, of the requested information. Pursuant to Sections 21.13(c), 21.20(d) and 21.28(d) of the Rules, and by letter, the Division dismissed by letter Line's applications for failure to comply completely in a timely manner with the Division's request for information. After acknowledging that it had failed to submit all of the requested information, Line states, on reconsideration, that "it would be in the public's interest to have a company with a business plan, a timetable, and a track record in the subscription television industry construct the ... station." Line's Portsmouth Petition at 2. Line argues its Portsmouth application should be reinstated because: (1) it intended to submit in the future a lease or lease option agreement or an amendment to change location due to the loss of the transmitter site originally specified; and (2) it has and will devote resources to perfect MMDS applications in other markets. With regard to its Steubenville application, Line states that it had "diligently sought to remedy the deficiencies listed by the Commission and wish[es] to press forward with this business." It further explains:

> Line ... by delaying response to the above-stated [deficiencies], was in no way attempting to display an antagonistic or cavalier attitude toward the Commission or the licensing process. Any delays have been due to misunderstandings on my part which I want to remedy at this time.

Line's Steubenville Petition at 2.

4. *Discussion.* As of the date of the Division's dismissal actions, Line had submitted some, but not all, of the information necessary for evaluation of its qualifications to be an MMDS licensee. For example, Line had not submitted a lease, lease option agreement, or other "concrete evidence" to demonstrate the availability of its proposed transmitter sites as required by Section 21.15(a).[2] For MMDS applications subject to the Commission's lottery proceedings, a demonstration of reasonable assurance of site availability is sufficient prior to the lottery. However, once the lottery is held, a fully-executed lease, lease option

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[1] The deficiencies cited in the Portsmouth letter were the absence of: (1) a public interest statement, pursuant to 47 C.F.R. Sec. 21.13(a)(4); (2) correct antenna structure height information for Federal Aviation Administration (FAA) air navigation hazard program compliance, as required by 47 C.F.R. Secs. 17.4(f) and 21.15(d); (3) current financial qualification data, pursuant to 47 C.F.R. Sec. 21.17; (4) a non-affiliation statement, pursuant to 47 C.F.R. Sec. 21.900; (5) tariff exhibit, as required by Item 29 of FCC Form 435; (6) emergency repair procedures and maintenance program, pursuant to 47 C.F.R. Sec. 21.15(e); (7) answers to questions on pages 5, 6 and 7 of FCC Form 435; (8) interference showing, as required by 47 C.F.R. Sec. 21.901(d)(7); (9) an analysis demonstrating a lack of harmful interference to Instructional Television Fixed Service (ITFS) licensees, pursuant to 47 C.F.R. Sec. 21.902(i); and (10) a lease or lease option agreement, pursuant to 47 C.F.R. Sec. 21.15(a). In addition, Line was directed in the Portsmouth letter to revise its answer to item 6(a) of FCC Form 435 to reflect reassignment from the F-group to the E-group channels. The deficiencies cited in the Steubenville letter were the absence of: (1) a lease or lease option agreement, pursuant to 47 C.F.R. Sec. 21.15(a); (2) current financial qualification data, pursuant to 47 C.F.R. Sec. 21.17; and (3) an analysis demonstrating a lack of harmful interference to ITFS licensees, pursuant to 47 C.F.R. Sec. 21.902(i).

[2] Even if Line was not required to comply with the requirements of Section 21.15(a), it was required, pursuant to Sec. 21.13(c), to submit a lease or lease option agreement after the Division directed it to do so. Section 21.13(a) provides, *inter alia*,: "In addition to the general application requirements of Secs. 21.13 through 21.17 of this part, applicants shall submit any additional documents, exhibits, or signed written statements of fact: ... (2) As the Commission, at any time after the filing of an application ... may require from any applicant ... to enable it to determine whether a radio authorization should be granted...."

agreement, or other concrete evidence of site availability must be submitted.[3] *Video/Multipoint, Inc.*, 6 FCC Rcd 5125, 5126 (Comm. Car. Bur. 1991).

5. Also, Line failed to comply with the Division's requests to submit the Section 21.902(i) ITFS interference analyses for its applications. At the time of the dismissals, Section 21.902(i) required MMDS applicants to submit, prior to receiving construction authorization, and at such time as the Commission requested it, an analysis demonstrating that the proposed MMDS facilities would not cause harmful interference to existing cochannel or adjacent-channel ITFS stations within 50 miles of the MMDS station's proposed transmitter site, or alternatively, a consent statement from the ITFS licensee. By the express language of this rule, an MMDS applicant must submit an ITFS interference analysis at such time as the Commission requests it. Despite the specific requests that these analyses be submitted by specified dates, Line failed to do so. *See Fortuna Systems Corp.*, 3 FCC Rcd 5122, 5123 (Comm. Car. Bur. 1988).

6. Line had a duty to submit curative amendments to its applications within thirty days of the Division's written request, or to obtain an extension of time. *VisionAire, Inc.*, 5 FCC Rcd 1952 (Comm. Car. Bur. 1990). Its failure to submit curative amendments for more than six months (Portsmouth) and 22 months (Steubenville) substantially impeded the expeditious offering of MMDS at Portsmouth and Steubenville. Also, Line's failure to respond in a timely manner to the Division's requests for information hindered the discharge of the Commission's statutorily-imposed duties under Title III of the Communication's Act. *By Direction of the Commission Letter to US West*, 60 Rad. Reg. 2d 8, 9 (1985). At the time of the dismissals, Line had not provided the required ITFS interference analyses and the required leases or lease option agreements. The Division was not in a position, therefore, to complete evaluation of Line's MMDS station proposals and its qualifications to be an MMDS licensee. *Multi-Point Television Distributors, Inc.*, 5 FCC Rcd 519, 520 (Comm. Car. Bur. 1990).

7. *Conclusion and Ordering Clause.* Having carefully considered the arguments and evidence presented, we find that the dismissal of these applications for failure to comply with the Division's request for information was proper, reconsideration of the action is not warranted, and reinstatement of the applications is not justified.[4] Accordingly, IT IS ORDERED that the petitions for reconsideration filed by Line of Site, Inc. regarding the above-referenced MMDS applications ARE DENIED. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. *See* 47 C.F.R. Secs. 1.4(b), 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

[3] *Revision of Part 21 of The Commission's Rules*, 2 FCC Rcd 5713, 5721 (1987) (Where there is a lottery "it shall be sufficient if the application adequately demonstrates reasonable assurance of the availability of the site. A license will not be granted, however, until concrete evidence of site availability is submitted." *Id.*)

[4] In the same document in which it requested reconsideration concerning its Portsmouth application, Line also requested a stay. Due to our disposition of Line's reconsideration petition, we hereby dismiss its request for stay as moot.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-17

In re Applications of

ANNETTE B. GODWIN	File No. BPH-891129MF
FERNANDINA BEACH FM LIMITED PARTNERSHIP	File No. BPH-891129MH
MARTIN A. SECREST	File No. BPH-891130MH
FIRST COAST BROADCASTING, INC.	File No. BPH-891130ML
EMILY METCALF	File No. BPH-891130MO
MARDIROSSIAN BROADCASTING, INC.	File No. BPH-891130MP
BROOMECO BROADCASTING, INC.	File No. BPH-891130MR

For Construction Permit for a
New FM Station on Channel 287A
in Fernandina Beach, Florida

Appearances

John F. Garziglia and *Howard J. Barr* on behalf of Annette B. Godwin; *Lewis I. Cohen* and *John J. Schauble* on behalf of Fernandina Beach FM Limited Partnership; *Howard M. Liberman* on behalf of Martin A. Secrest; *J. Geoffrey Bentley, Eric A. Eisen,* and *Jesse A. Halvorsen* on behalf of First Coast Broadcasting, Inc.; *Lawrence J. Bernard, Jr.* on behalf of Emily Metcalf; *Nora E. Garrote* on behalf of Mardirossian Broadcasting, Inc.; *Thomas J. Hutton* on behalf of Broomeco Broadcasting, Inc.; and *Robert A. Zauner* on behalf of the Mass Media Bureau.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOSEPH P. GONZALEZ

Issued: November 25, 1992; Released: December 3, 1992

PRELIMINARY STATEMENT

1. The applications of Annette B. Godwin (Godwin), Fernandina Beach FM Limited Partnership (Fernandina Beach FM), Martin A. Secrest (Secrest), First Coast Broadcasting, Inc. (First Coast), Emily Metcalf (Metcalf), Mardirossian Broadcasting, Inc. (MBI), and Broomeco Broadcasting, Inc. (Broomeco), along with six other applications which have been dismissed with prejudice, were designated for hearing by a *Hearing Designation Order* (HDO), DA 91-129, released on February 13, 1991, on the following issues:

> (1) If a final environmental impact statement is issued with respect to First Coast in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.
>
> (2) To determine whether there is a reasonable possibility that the tower heights and locations proposed by Godwin, Fernandina Beach FM, Secrest, First Coast, Metcalf, and MBI would constitute a hazard to air navigation.
>
> (3) To determine which of the proposals would, on a comparative basis, best serve the public interest.
>
> (4) To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

2. The contingent environmental issue specified against the application of First Coast was deleted by *Order*, FCC 91M-3018 (released October 4, 1991). The air hazard issue specified against all of the applicants was resolved in favor of each applicant by the following *Orders:* FCC 91M-3247 (released November 8, 1991) (Fernandina Beach FM); FCC 91M-3242 (released November 8, 1991) (Secrest); FCC 91M-3241 (released November 8, 1991) (Metcalf); FCC 91M-2296 (released July 26, 1991) (MBI); FCC 91M-2292 (released July 26, 1991) (First Coast); FCC 91M-2287 (released July 26, 1991) (Godwin).

3. The following issues were designated against Broomeco's application by the *Memorandum Opinion and Order*, FCC 91M-2413, released August 5, 1991:

> (1) To determine whether Broomeco's proposed tower and transmitter location would constitute a hazard to air safety;
>
> (2) To determine the facts and circumstances surrounding Broomeco's request to the Federal Aviation Administration (FAA) for a determination of no hazard to air safety with respect to its proposed tower and transmitter location;
>
> (3) To determine whether Broomeco has concealed or misrepresented facts concerning the status of its FAA request; and
>
> (4) In light of the evidence adduced concerning the above issues, whether Broomeco is qualified to be a licensee.

4. The air hazard issue was resolved in Broomeco's favor by *Order*, FCC 91M-3245 (released November 8, 1991), following an amendment to its engineering proposal.

5. A prehearing conference was held on May 1, 1991, and a further prehearing conference was held on June 12, 1991. Hearing sessions were held on November 12, 13, 14, 15, 18, and 22, 1991. The record was closed on November 22, 1991. Proposed Findings of Fact and Conclusions of Law were filed by all of the applicants and the Mass Media Bureau; and Godwin, Fernandina Beach FM, First Coast, Metcalf and Broomeco filed replies thereto.

ANNETTE B. GODWIN

Findings of Fact

6. Ms. Godwin is an individual applicant (Godwin, Ex. #1, p. 1).

Diversification

7. Ms. Godwin has no ownership interest in any medium of mass communications. However, she is presently employed as a radio media buyer for radio stations in northern Florida and southern Georgia, and on April 1, 1991, she opened a buying service, Triple AAA Advertising Agency and Consultants, for electronic media in the northern Florida and southern Georgia area. Ms. Godwin also began working as a host for a local access cable television show on April 25, 1991 (Godwin, Ex. #1, p. 6). Other than these employment activities and her pending application for the Fernandina Beach broadcast facility, Ms. Godwin has no other interest or connection with any medium of mass communications.

8. Ms. Godwin will terminate her employment as an independent contractor, close the Triple AAA Advertising Agency and Consultants, and resign as host of the talk show program as well as from any other position of employment in order to fulfill her full-time commitment to her proposed radio station (Godwin, Ex. #1, p. 6).

Best Practicable Service

Annette B. Godwin

9. Ms. Godwin will serve as General Manager of her proposed station, devoting no less than 40 hours a week to her duties at the station (Godwin, Ex. #1, p. 1). As General Manager, she will oversee all areas of the station's operations, and she will be responsible for establishing station policy and making sure that these policies are carried out (Godwin, Ex. #1, p. 1).

10. Ms. Godwin has lived in Fernandina Beach, Florida for virtually her entire life, except for September 1969 to September 1971 and August 1988 to March 1989 when she lived in Yulee, Florida, a point still within her proposed service area. In 1986, Ms. Godwin was appointed by the Mayor of Fernandina Beach to be on the Child Abuse Task Force, which by her own admission has been somewhat inactive since its inception, and she worked with the United Way in 1988. In addition, she has been an active member of the Chamber of Commerce of Amelia Island, Fernandina Beach and Yulee, Florida since 1986, of the Fernandina Beach Women's Club since September 1983, and of the Leukemia Society since 1990. She also coordinated the grand opening for the Historical Trolley System for Fernandina Beach in 1990, and put together a college scholarship fund for a deserving student of the 1991 graduating class of the Fernandina Beach High School. Ms. Godwin also co-chaired, in 1990, the Hands Off the "Bed Tax" movement (Godwin, Ex. #1, pp. 2-4).

11. Ms. Godwin also claims credit for serving as a radio media buyer and coordinator of events for the following activities within Fernandina Beach or her proposed service area: Fernandina Beach Isle of 8 Flags Shrimp Festival in May of 1989, 1990, and 1991; Ameliafest, 1990 and 1991; Buccaneer Ball, 1990 and 1991; Northeast Florida Fair, 1990 and 1991. Ms. Godwin received compensation for these activities, but she asserts that all contained a substantial community service aspect (Godwin, Ex. #1, p. 4). Ms. Godwin has received a number of awards for service to the Fernandina Beach area, and they are as follows: 1985 Action Volunteer Award (Fernandina Beach Women's Club); 1989 Chamber of Commerce Presidents Award; 1990 Chamber of Commerce Presidents Award; 1990 Leadership Award for Chairman of the Ambassadors; and the 1990 Leadership Award for Chairman of Membership Drive. The last four awards were given to Ms. Godwin in recognition of her work for the Amelia Island, Fernandina Beach and Yulee Chambers of Commerce (Godwin, Ex. #1, pp. 4-5).

12. Ms. Godwin, between 1984 and 1987, worked for radio station WLKC where she was involved in sales, copywriting, traffic, and general office duties. In addition, she cut a few commercials for the radio station. From 1988 until 1989, she worked for radio station WBGA in sales and as Public Service Director for Nassau County and Camden County. Since 1990, she has been employed, on an independent contractor basis, as a radio media buyer for radio stations in northern Florida and southern Georgia (Godwin, Ex. #1, p. 5). On April 25, 1991, Ms. Godwin began serving as the host of a local access cable television talk show called "What's Going on in Fernandina Beach on Amelia Island" (Godwin, Ex. #1, p. 6). Ms. Godwin will terminate all of her employment activities in order to fulfill her full-time commitment to her proposed radio station (Godwin, Ex. #1, p. 6).

Auxiliary Power

13. Ms. Godwin will maintain auxiliary power facilities at the transmitter and studio sites in order to maintain service in the event of an interruption of electrical service (Godwin, Ex. #1, p. 6).

CONCLUSIONS OF LAW

Diversification

14. Ms. Godwin has no chargeable media interests.

Best Practicable Service

15. Ms. Godwin proposes to work full-time, 40 hours or more a week, at her proposed station. There is no evidence of record which calls into question her commitment to the project or her ability to perform her duties as General Manager. Her intention to rely on sales commissions as income, or, at a later date incorporate the entity does not compromise her full-time integration commitment in any way. Although Ms. Godwin will, as noted above, spend part of her time at the station in sales activities, such a fact does not preclude the award of a full-time integration credit for Ms. Godwin. See *Tulsa Broadcasting Group*, 2 F.C.C. Rcd 6124, 6128. Similarly, Ms. Godwin's appointment as President of the Chamber of Commerce for 1992 will not impair her ability to meet her commitment since her term lasts for only one year. Her appointment will have long since terminated by the time her station becomes operational.

16. Accordingly, the Presiding Judge finds that Ms. Godwin's application is entitled to a 100 percent quantitative integration credit which is qualitatively enhanced by her long term residence in Fernandina Beach, Florida, with some civic involvement.

17. As noted above, Ms. Godwin worked for radio stations in a wide variety of capacities. Although none can be described as managerial in nature, she is entitled, nevertheless to a past broadcast experience credit for the experience she gained in these roles. See *Radio Jonesboro, Inc.* 96 F.C.C. 2d. 1106. The application is itself entitled to a further comparative credit for its proposal to install an auxiliary power source at its studio and transmitter locations.

18. One final matter requires consideration. It is argued that Ms. Godwin did not have the entire application before her when she signed it, and that her statement to that effect was not correct and, therefore, constituted a misrepresentation. It is noted that a letter from Godwin's engineer, dated November 28, 1989, states that he is forwarding the engineering portion of her application. The very same letter, however, states that a draft was sent by Federal Express on November 27, 1989 (Tr. 108).

19. There is no certainty that the dates referred to in the engineer's letter were accurate, even if we assume that they establish a discrepancy. Furthermore, Ms. Godwin willingly produced the letter during discovery which appears inconsistent with an attempt to deceive. See *American International Development, Inc.*, 86 F.C.C. 2d. 808, 816 (1981). The Presiding Judge concludes, therefore, that there is no evidence that Ms. Godwin did not have, at the very least, again assuming that the dates referenced in the letter are accurate, a draft document of the engineering portion of the application before her when she signed her application. There is no basis, therefore, to find that her representation that she had the full application before her when she certified to its accuracy was not correct.

FERNANDINA BEACH FM LIMITED PARTNERSHIP

Findings of Fact

20. Fernandina Beach FM is a Delaware limited partnership. Troy Lynn Payne is the sole General Partner and she has a 15 percent partnership interest. Robert Lee Dunham is the sole limited partner, and he holds an 85 percent partnership interest (Fernandina Beach FM, Ex. #1).

Diversification

21. Neither Fernandina Beach FM, Ms. Payne, nor Mr. Dunham has any media interests (Fernandina Beach FM, Ex. #1).

Best Practicable Service

Troy Lynn Payne

22. Ms. Payne, a black American, proposes to serve as Fernandina Beach FM's General Manager, devoting a minimum of 40 hours a week to her duties at the station. As General Manager, she will be responsible for overseeing all aspects of the station's operations, including, but not limited to, the station's programming, sales, news, and business functions. In addition, she will be responsible for implementing the proposed station's Equal Employment Opportunity Program (Fernandina Beach FM, Ex. #4).

23. Ms. Payne has lived at a point within the proposed service area since 1979, except during the school year between August 1984 and May 1990 when she attended college in Tallahassee, Florida. There is no evidence of record which contradicts this claim. For the past six years, Ms. Payne has helped raise funds for the Urban League and for sickle cell anemia research by participating in fashion shows (Fernandina Beach FM, Ex. #4), and she has also acted as a fundraiser and a behind-the-scenes volunteer for a talent contest which was also a fundraiser for sickle cell anemia research (Fernandina Beach FM, Ex. #4). These activities, according to her testimony, benefitted people living within the service area of the proposed station, and the fashion show actually took place within that area (Tr. 184, 189). In addition, Ms. Payne began tutoring underprivileged children in May 1990 in connection with the Graduate Chapter of the Delta Sigma Theta sorority in Jacksonville, Florida (Fernandina Beach FM, Ex. #4). The actual tutoring program took place within the service area (Tr. 190; Joint Exhibit 1). In 1989 and 1990, Ms. Payne answered telephones in downtown Jacksonville, Florida, for the United Negro College Fund (Tr. 190), and in 1990, she participated in a march commemorating the birthday of Martin Luther King, Jr. at Edward Waters College in downtown Jacksonville, Florida (Fernandina Beach FM, Ex. #4; Tr. 191).

Auxiliary Power Source

24. Fernandina Beach FM proposes to install an auxiliary power source at its studio and transmitter locations in order to insure continued service in the event of a power failure (Fernandina Beach FM, Ex. #1).

CONCLUSIONS OF LAW

Diversification

25. The Fernandina Beach FM application is not subject to a diversification demerit.

Best Practicable Service

26. It is represented by Fernandina Beach FM that its General Partner, Troy Payne, has been and will be in complete control of the applicant and the licensee in the event that it receives the license for the Fernandina Beach, Florida facility. This claim is completely inconsistent with the manner in which this entity came about and in the way this application has been prosecuted: to accept that claim runs counter to simple logic.

27. Mr. Dunham, in effect, conceived this project after having heard from Fernandina Beach FM's attorney that the frequency was available (Tr. 861). After being advised by Mr. Cohen, the attorney in question, that he needed an individual from the general area in order to secure the station (Tr. 864), Mr. Dunham contacted Mr. Payne, a colleague and the father of the General Partner, Ms. Payne (Tr. 864). It was Mr. Payne who suggested his daughter, Troy Payne (Tr. 865). Mr. Dunham then told Mr. Cohen to talk to Ms. Payne and explain the application process to her (Tr. 865).

28. It was decided by Mr. Dunham that Ms. Payne would have a limited equity interest in the venture, 15 percent (Tr. 881); and that she would not have any financial obligation under the limited partnership agreement (Fernandina Beach FM, Ex. #3; Tr. 333). Mr. Cohen called Ms. Payne (Tr. 205) one or two weeks prior to the filing of the application, and he came to Florida to meet with her (Tr. 206). At the time, Ms. Payne understood Mr. Cohen to be acting as Mr. Dunham's attorney, and that he was acting on the latter's behalf (Tr. 220, 208, 212). After the meeting,

Ms. Payne spoke to Mr. Schauble, co-counsel (Tr. 211), who also traveled to Jacksonville, Florida to meet with Ms. Payne (Tr. 211-12). The date of this meeting with Mr. Schauble was November 28, 1989, the same date she signed the application and the partnership agreement (Tr. 217-18).

29. Mr. Payne never spoke to Mr. Dunham prior to the filing of the application (Tr. 220), and they did not negotiate over the equity split (Tr. 881). In addition, they never discussed the position Ms. Payne would hold at the radio station (Tr. 887). Although Mr. Dunham maintains a personal financial statement (Tr. 878), Ms. Payne did not see such a statement prior to entering into the partnership agreement (Tr. 353-54, 879). She did not have and does not now have any clear knowledge of Mr. Dunham's income, assets, and liabilities (Tr. 354).

30. Although Ms. Payne was presented with the limited partnership agreement prior to her meeting with Mr. Schauble (Tr. 261-62) and had received a draft limited partnership agreement from Mr. Cohen at their initial meeting (Tr. 264), Ms. Payne did not have anyone independent of her communications counsel review the agreement prior to signing it (Tr. 265).

31. At her deposition, Ms. Payne knew very little about how the applicant came into existence. For example, she had no knowledge of how the equity split was arrived at (Tr. 267); no independent understanding of her obligation to perform services for the partnership (Tr. 271); and little or no knowledge or understanding of how Mr. Dunham's contribution figure was arrived at (Tr. 272-75). In addition, she did not know when Mr. Dunham made his first contribution to the partnership (Tr. 275); she did not know how Mr. Dunham came to sign the limited partnership agreement (Tr. 277); and she did not have a full understanding of the fee arrangement with her communications counsel (Tr. 332), which was arrived at between Mr. Cohen and Mr. Dunham (Tr. 332).

32. Ms. Payne also did not know the name of her engineer at deposition (Tr. 278) or how he came to be hired (Tr. 301), or what the fee arrangement was with the engineer (Tr. 302). When Ms. Payne met with Mr. Schauble, the transmitter site had already been selected (Tr. 278), and she had nothing to do with its selection (Tr. 278). Ms. Payne did not speak to the owner of the original site (Tr. 303), or correspond with the owner of the site (Tr. 303). Ms. Payne did, however, obtain Fernandina Beach FM's second transmitter site (Tr. 321).

33. Ms. Payne first saw the Fernandina Beach FM financing letter on November 28, 1991 (Tr. 281). The financing letter was given directly to Mr. Dunham (Tr. 873-74, 875). Ms. Payne had no knowledge of how he acquired the letter (Tr. 283), and she did not submit any information to the lending institution or speak to the bank (Tr. 285-87). In addition, Ms. Payne, at her deposition had no independent knowledge of what her obligations might be under the agreement with the bank (Tr. 282), of how the station's budget figures were determined (Tr. 289), nor did she discuss the costs of constructing the station with anyone (Tr. 289-90); and, after Fernandina Beach FM amended to a new transmitter site, Ms Payne did not conduct an independent review of the station's budget to see if the figures set forth therein were still appropriate (Tr. 318-19). At the hearing, however, she modified her earlier deposition testimony, by indicating that she did discuss the figures with her attorney (Tr. 290-91). As to her proposed salary, Ms. Payne stated that she had no input as to her salary figure (Tr. 297).

34. Ms. Payne's contribution, financial and otherwise, to the actual prosecution of the application has been minimal at best. For example, she has paid only incidental expenses associated with prosecuting the application, such as the fees for sending various documents by Federal Express (Tr. 300-01). Although she claimed at the hearing that she had hired her attorney (Tr. 222), at her deposition, she indicated that she thought it was Mr. Dunham (Tr. 222). Ms. Payne did make capital calls; however, they were done at the direction of her counsel (Tr. 348-51, 363-64, 365-67), and she kept Mr. Dunham informed about the partnership through these capital calls (Broomeco, Ex. #6). Ms. Payne did prepare the application's programming statement and the equal employment opportunity section (Tr. 215-16). She also reviewed the application, the partnership agreement, and the station's budget with counsel (Tr. 291).

35. Mr. Dunham and his attorney, Mr. Cohen, were clearly the moving forces behind this application. The Messrs. Cohen and Schauble have at all times acted as Mr. Dunham's agent in addition to their roles as counsel to the applicant. Mr. Dunham was in control to the extent that one month after the application was filed (Tr. 870), he asked Ms. Payne's father to impress upon her the importance of the application process (Tr. 871-72). In addition, Mr. Cohen keeps Mr. Dunham informed about the progress of the project (Tr. 906-07), and Mr. Dunham frequently receives carbon copies of items sent to Ms. Payne (Tr. 304-07). The fee arrangement for covering the legal costs of prosecuting this application was made between Mr. Dunham and Mr. Cohen, who presented Mr. Dunham with a range of what the application might cost (Tr. 884), a procedure which they have followed in the past (Tr. 884-85). Mr. Cohen bills the partnership and Ms. Payne bills Mr. Dunham (Tr. 885).

36. The Commission will closely scrutinize an application involving an allegedly passive investor when an attorney has played an active role in the applicant's formation, see *Tulsa Broadcasting Group* 2 F.C.C. Rcd. 6124, 6128 (Rev. Bd. 1987). There can be no doubt that this is the case here. In addition, the casual manner in which Ms. Payne became involved in this project belies the applicant's claim that she will be in complete control of the venture. The two principals knew one another based solely on occasional visits that Mr. Dunham made to Mr. Payne's home. Ms. Payne and Mr. Dunham never spoke with one another about the venture prior to entering into the limited partnership agreement. Also, Ms. Payne's inability, at deposition, to answer the most basic questions about the application, demonstrate a lack of personal involvement on her part which further demonstrates that she was not in control. It is concluded, therefore, that Fernandina Beach FM's partnership arrangement is a sham, and for purposes of quantifying its integration credit, the equity interest of its limited partner, Mr. Dunham, must be taken into consideration. Accordingly, it will only receive a 15 percent quantitative integration credit for its proposal to integrate Ms. Payne into the affairs of the station, a figure which represents the amount of equity she holds in the entity.

37. Because its quantitative integration credit falls far below the amount awarded a number of its competitors, no purpose would be served in determining the extent to which this credit is qualitatively enhanced, or for considering this application further.

MARTIN A. SECREST

Findings of Fact

38. Martin A. Secrest is an individual applicant (Secrest, Ex. #1).

Diversification

39. Mr. Secrest has no attributable interest in any medium of mass communications (Secrest, Ex. #1).

Best Practicable Service

40. Mr. Secrest will serve as his station's General Manager, devoting a minimum of 40 hours a week to his duties at the proposed station. In order to implement his integration pledge, Mr. Secrest will terminate any and all conflicting time commitments (Secrest, Ex. #1).

41. Mr. Secrest does not presently live within the proposed service area of his station. However, he has indicated that in the event that his application is granted, he will relocate to and reside in Fernandina Beach, Florida in order to implement his integration commitment (Secrest, Ex. #1).

42. From 1979 to 1980, Mr. Secrest worked full-time as an announcer and Production Manager at WMJS(FM), Prince Frederick, Maryland. He subsequently became the full-time Program Director and later Operations Manager at broadcast station WSUL(FM), Monticello, New York. In 1982 and 1983, he also worked, on the weekend, as an announcer at WKIP(AM), Poughkeepsie, New York. Mr. Secrest left WSUL(FM) in 1983, and for three months in 1983 and 1984, Mr. Secrest worked as an Account Executive at WJOK(AM), Gaithersburg, Maryland. From 1984 to 1989, he served as full-time Audio Engineer at co-owned radio stations WMAL(AM) and WRQX(FM), Washington, D.C., and from 1987 to the present, he has worked part-time as an announcer for WMAL(AM), Washington, D.C. Since September, 1989, Mr. Secrest has been a free lance audio and video technician for WMAL(AM), Washington, D.C. and for WJLA(TV), Washington D.C. since October, 1990. He subsequently became employed as a producer/announcer for the Voice of America/Europe, a division of the United States Information Agency (Secrest, Ex. #1), and since May 11, 1992, he has been a reporter for the Worldwide English Division of the Voice of America. See *Order* 92M-746, released in this proceeding on July 2, 1992.

Auxiliary Power

43. Mr. Secrest will install auxiliary power generators at both his studio and transmitter sites to insure continued operation in the event of a power failure (Secrest, Ex. #1).

CONCLUSIONS OF LAW

Diversification

44. Mr. Secrest's application is not subject to a diversification demerit.

Best Practicable Service

45. Mr. Secrest's application is entitled to a 100 percent quantitative integration credit for his proposal to work on a full-time basis, devoting 40 hours or more a week to his duties as the station's General Manager. His integration credit is qualitatively enhanced by his commitment to move to the Fernandina Beach, Florida area to fulfill this commitment, and by his past broadcast experience. The application, itself, is entitled to a further comparative credit for Mr. Secrest's proposal to install an auxiliary power source at his transmitter and studio locations.

FIRST COAST BROADCASTING, INC.

Findings of Fact

46. First Coast is a Georgia Corporation with two classes of common stock, voting and non-voting. Allen W. Marshall, III owns 91.1 percent of the issued and outstanding common voting stock of First Coast and Barry G. Clark owns 8.9 percent of the issued and outstanding common voting stock. Mr. Marshall is President and Treasurer as well as a Director of First Coast and Mr. Clark is Secretary and a Director of the Corporation. There are no other directors. John Thomas owns 70 shares of common, non-voting stock and Leonard Bolton owns 18 shares of common, non-voting stock (First Coast, Ex. #1).

Diversification

47. First Coast does not have any ownership interest in any other medium of mass communications (First Coast, Ex. #2). Messrs. Thomas and Bolton, respectively, own 90 percent and 10 percent of the stock of Design Media, Inc., the licensee of WKEU(AM) and WQUL(FM), Griffin, Georgia and WQIS(AM) and WNSL(FM), Laurel, Mississippi. Neither Mr. Marshall nor Mr. Clark has any ownership interest in any medium of mass communications (First Coast, Ex. #2; First Coast, Ex. 3, p. 7; First Coast, Ex. #4, p. 3). Mr. Clark is currently Sales Manager of WKEU(AM) and WQUL(FM), Griffin, Georgia. In the event that First Coast receives the construction permit, Mr. Clark will resign his position as Sales Manager (First Coast, Ex. #4, p. 3).

Best Practicable Service

Allen W. Marshall, III

48. Mr. Marshall will serve as General Manager of the proposed station, devoting 40 hours or more a week to his duties at the station. As General Manager, Mr. Marshall will be responsible for the day-to-day operation of the station, the supervision of the other members of the station's management team, the implementation of the station's affirmative action program as well as the station's community service policy, and he will also be responsible for hiring the station's personnel (First Coast, Ex. #3). Mr. Marshall will relocate from Griffin, Georgia to a home that he owns on Amelia Island, if First Coast is awarded the permit, and he will withdraw from all current business opportunities and employment to the extent necessary to effectuate his integration proposal (First Coast, Ex. #3).

49. Since 1985, Mr. Marshall has been the owner of a home on Amelia Island, the island on which Fernandina Beach is located. Mr. Marshall considers the home to be

his second residence (Tr. 437). He spends, during the average year, approximately four weeks at his Amelia Island home (Tr. 442). Mr. Marshall has been a member of the Amelia Island Plantation Community Association and the Amelia Island Plantation Club Association from 1985 to the present (First Coast, Ex. #3, p. 3).

50. Mr. Marshall has been employed in broadcasting since 1953. He worked as a disc jockey and salesman at family owned station WKEU, Griffin, Georgia, from 1953 through 1960. During the year 1960, he was a disc jockey with WRIX(AM), Griffin, Georgia, and from 1962 to 1963, he was a disc jockey with WGAU(AM) and WGAU(FM), Athens, Georgia. From 1964 to 1966, Mr. Marshall was Program Director and Assistant Operator at WKEU until he began a tour of duty with the United States Army. Returning to WKEU and WKEU(FM) in 1968, he was Program Director, News Director, General Manager, Chief Operator and President until he sold the stations in 1986 (First Coast, Ex. #3, p. 2).

Barry G. Clark

51. Mr. Clark will serve as the proposed station's full-time Sales Manager (First Coast, Ex. #4). As Sales Manager, Mr. Clark will have the customary duties of a person in that position, including day-to-day responsibility for the Sales Department, hiring and supervising the sales team, formulating and reviewing the station's sales policies and goals, and supervising the billing of advertisers. Along with the other members of the station's management team, he will also insure implementation of the station's affirmative action policy (First Coast, Ex. #4). Mr. Clark will terminate his current employment as Sales Manager at station WKEU(AM) and WQUL(FM), Griffin, Georgia, after a grant of the construction permit application and prior to the commencement of operations under program test authority. In the event that First Coast is the successful applicant, he will relocate from Griffin, Georgia to a home within the service area of the proposed station (First Coast, Ex. #4).

52. From 1975 until 1977, Mr. Clark was a disc jockey at WKEU(AM), Griffin, Georgia, and from 1978 to 1979, he held a similar position at WGAF, Valdosta, Georgia. In 1982, Mr. Clark became a disc jockey and salesman at WGAF, as well as a Certified Radio Marketing consultant through the Radio Advertising Bureau. From 1983 until 1987, Mr. Clark was a salesman with WKEU(AM) and WQUL(FM), Griffin, Georgia, and in 1989, he became a Sports Director and a salesman with station WSTI in Valdosta, Georgia, a position he left to become Sales Manager at station WKEU(AM) and WQUL(FM), Griffin, Georgia (First Coast, Ex. #4, p. 2).

Auxiliary Power

53. First Coast will install an auxiliary power source at its studio and antenna locations in order to insure continued operation in the event of a power failure (First Coast, Ex. #5).

CONCLUSIONS OF LAW

Diversification

54. Messrs. Thomas and Bolton, First Coast's non-voting shareholders, are the owners of, respectively, 90 percent and 10 percent of the stock of Design Media, Inc., the licensee of stations WKEU(AM) and WQUL(FM), Griffin, Georgia and WQIS(AM) and WNSL(FM), Laurel, Mississippi. None of these stations are the subject of a diversification commitment by either one of these individuals (First Coast, Ex. #2). In view of the finding reached below that the Messrs. Thomas and Bolton are not properly insulated from active involvement in the applicant, their media interests are chargeable to First Coast, and it is subject to a diversification demerit.

Best Practicable Service

55. The behavior of the non-voting shareholders of First Coast has cast doubt on the legitimacy of First Coast's two tier structure. Mr. Bolton and Mr. Thomas participated in First Coast's March 9, 1990 annual shareholders meeting (Tr. 476-77). Mr Bolton also attended other meetings of First Coast's shareholders (Tr. 477). Specifically, Mr. Bolton attended a February 22, 1991 annual meeting of First Coast's shareholders (Tr. 478) and a First Coast's Board of Directors meeting in September 1990 (Tr. 484-87). He also attended a Board of Directors meeting in April 1991 (Tr. 488). Mr. Marshall, one of the voting shareholders, distributed material that had been sent by First Coast's attorney (Tr. 491), and a general discussion was held about the material (Tr. 491). They also discussed the status of First Coast's tower site and that of one of First Coast's competitors (Tr. 491).

56. Although Mr. Bolton and Mr. Thomas hold non-voting stock, neither First Coast's Articles of Incorporation or its By Laws contain any specific provisions limiting the activities of the non-voting shareholders (First Coast, Ex. #1; Godwin, Ex. #6). In addition, First Coast's Articles of Incorporation do not prohibit non-voting shareholders from becoming owners of voting stock. All shareholders can purchase new or additional shares of stock of any class as a matter of right (Godwin, Ex. #6, p. 6). Only 112 shares of voting stock out of a total of 500,000 shares authorized have been issued. Although there is no evidence of record that First Coast proposes to issue any additional shares of stock, and the non-voting shareholders, clearly, cannot force an issuance of additional stock, the possibility nevertheless exists that such stock could be issued and non-voting shareholders could acquire voting stock. In light of the past activities of the non-voting shareholders, it is not inconceivable that Mr. Marshall, who has had a close business relationship with these men for some time, might decide to expand the number of voting shareholders. Further evidence of this close level of cooperation is the joint efforts of the voting and non-voting shareholders in clearing up the transmitter site, and the extent to which the non-voting shareholders, Mr. Bolton in particular, have been included in the Corporation's business meetings. The mere fact that he cannot vote does not mean that he cannot contribute to any discussion or propose a course of action. The Presiding Judge concludes, therefore, that the past activities of the non-voting shareholders of First Coast demonstrate an involvement in First Coast's application which undermines its contention that if granted the permit, it will observe the active-passive distinction in the future. Accordingly, the Presiding Judge concludes that First Coast is entitled to a quantitative integration credit which represents the total equity interest of its voting shareholders. In addition, the Marshall and Clark quantitative integration credits are qualitatively enhanced by their commitment to move to the service area in the event that First Coast is the successful applicant and by their past broadcast experience.

The First Coast application itself is entitled to a further comparative credit for its proposal to install an auxiliary power source at its antenna and studio locations.

EMILY METCALF

Findings of Fact

57. Emily Metcalf is an individual applicant (Metcalf, Ex. #1).

Diversification

58. Ms. Metcalf does not have any interest in or association with any medium of mass communications (Metcalf, Ex. #1).

Best Practicable Service

59. Ms. Metcalf proposes to become the full-time General Manager of her proposed station, and she will work a minimum of 40 hours a week at the station (Metcalf, Ex. #2, p. 1). She will perform those duties customary to that position (Metcalf, Ex. #2).

60. Ms. Metcalf, since March 1981, has resided continuously in Fernandina Beach, Florida. She has been active in the following Fernandina Beach community activities: Five Points Baptist Church of Fernandina Beach (member and Sunday School teacher 1985-1989); Summer Program Bible teacher (1987, 1988, 1989); Little League Baseball, Team Mother (1988, 1990, 1991); and Pop Warner Football League, Secretary/Cheerleader Coach (1990); Cheerleading Coordinator (1991) (Metcalf, Ex. #2).

Auxiliary Power

61. Ms. Metcalf proposes to install auxiliary power facilities at the transmitter and studio sites in order to insure continued service in the event of a power failure (Metcalf, Ex. #3).

CONCLUSIONS OF LAW

Diversification

62. Ms. Metcalf's application is not subject to a diversification demerit.

63. The evidence of record clearly demonstrates that Ms. Metcalf's father was instrumental in getting Ms. Metcalf involved in filing an application in this proceeding, and that he took steps early on in the process to move the application forward. For example, he met with her, along with a friend, and told her of the broadcast opportunity in Fernandina Beach (Tr. 506). They also suggested the name of the communications counsel that she ultimately hired (Tr. 512), and she agreed at the same meeting to go forward with the application (Tr. 512). All present also discussed the role that Ms. Metcalf would have at the station (Tr. 513), and Mr. Metcalf agree to provide his daughter with the necessary financial assistance (Tr. 513).

64. Once the decision was made to apply for the facility, Mr. Metcalf, who owns 50 percent of the stock of Johnson City Broadcasters, the licensee of WILI-FM, Wrightsville, Georgia, approached the lending institution about acquiring financing for the station. He presented the bank with a copy of the proposed station's budget and draft bank letter (Tr. 535). Mr. Metcalf agreed to be personally liable for the loan (Tr. 539), although this requirement is not set forth in the bank letter (Tr. 540). He also agreed and furnished Ms. Metcalf with nearly all the necessary funds to prosecute the application (Tr. 513, 540-41), which she is not required to repay (Tr. 541). It is argued that the manner in which Ms. Metcalf entered into the application process, and her alleged unfamiliarity with her application are not indicative of an individual who will suddenly take control once issued the permit. Reference is made to her uncertainty as to what led her to contact the particular bank; and her testimony that she will have at least five employees, whereas in her application she indicated that she would have fewer than five. In addition, at her deposition, Ms. Metcalf did not know if her counsel was billing her on an hourly basis (Tr. 546). As to the manner in which she entered into the application process, notice is taken of Ms. Metcalf's failure to make any changes in the budget (Tr. 521) or fill out the application form (Tr. 532); and her reliance on her father to arrange for the public inspection file and publication of local notice of the designation of their application for hearing. It is argued that her inactivity creates the strong inference that Ms. Metcalf is being used by Mr. Metcalf and his partner in the Wrightsville, Georgia station to acquire control over a station which they could not otherwise acquire because of the diversification demerit such an application would suffer due to the proximity of their Wrightsville, Georgia station.

65. Ms. Metcalf did, however, hire her attorney and engineer. In addition, she worked with her engineer in locating a transmitter site, made the necessary arrangements with a real estate agent for acquiring the site, and actively participated in the preparation of the budget (Tr. 515-16, 553-54, 555-57, 559-60). In addition, Ms. Metcalf spoke with her banker by telephone before her father acquired the loan commitment, and gave her father a budget for the station and a sample bank letter which he took with him to the lending institution (Tr. 535-536).

66. Ms. Metcalf gave the appearance of an individual with the necessary maturity to assume the responsibilities of general manager at the proposed station. The fact that she relied on her father, an experienced broadcaster, and her attorney and engineer, in prosecuting her application, appears perfectly reasonable in light of Ms. Metcalf's lack of any broadcasting experience and her father's financial support for the project. Ms. Metcalf's father appears to be nothing more than a supporting parent, and there is no evidence of record that he, her attorney or engineer have any interest in the application. Accordingly, the Presiding Judge finds that Ms. Metcalf is entitled to a 100 percent quantitative integration credit for her proposal to serve as the station's full-time General Manager. This quantitative integration credit is qualitatively enhanced by her residence, since 1981, within the community of license, with some civic involvement. The application, itself, is entitled to a further comparative credit for Ms. Metcalf's proposal to install an auxiliary power source at her studio and transmitter locations.

MARDIROSSIAN BROADCASTING, INC.

Findings of Fact

67. MBI is a Maryland corporation. Aris Mardirossian is its sole shareholder and director (MBI, Ex. #1).

Diversification

68. Neither MBI nor its sole principal, Mr. Mardirossian, has any attributable media interests (MBI, Ex. #1).

Best Practicable Service

69. MBI proposes no integration (MBI, Ex. #1; Tr. 570-74).

Auxiliary Power

70. MBI proposes to install auxiliary power facilities at its transmitter and studio sites in order to maintain service in the event of a power failure (MBI, Ex. #1).

CONCLUSIONS OF LAW

Diversification

71. MBI is not subject to a diversification demerit.

Best Practicable Service

72. MBI's integration proposal, as stated, was completely contingent on the outcome of another proceeding. The Presiding Judge ruled at the hearing that MBI was not entitled to any integration credit; a ruling which is affirmed here.

73. MBI's application is, however, entitled to a comparative credit for its proposal to install an auxiliary power source at its transmitter and studio locations.

BROOMECO BROADCASTING, INC.

Findings of Fact

74. Broomeco is a Delaware corporation with two classes of stock, voting and non-voting (Broomeco, Ex. #1). Broomeco has issued 510 shares of voting stock and 490 shares of non-voting stock. The ownership of Broomeco is as follows: Yuleen Broome owns 51 percent of the equity of Broomeco, and she serves as President, Director; and Secretary/Treasurer; Billy Joe Rutledge holds 49 percent of the equity, and holds no position with the Corporation. Ms. Broome is the sole voting shareholder, and Mr. Rutledge is the sole non-voting shareholder (Broomeco, Ex. #1).

Diversification

75. Neither Broomeco nor any of its principals has an attributable interest in any medium of mass communications (Broomeco, Ex. #1).

Best Practicable Service

Yuleen Broome

76. Ms. Broome proposes to serve as the station's full-time General Manager, devoting a minimum of 40 hours a week to her duties at the station. As General Manager, she will be responsible for the station's operations, including the establishment and implementation of the station's policies, the hiring, firing, and supervision of the station's employees, and the overall management of the station (Broomeco, Ex. #1). In order to fulfill her commitment to the station, Ms. Broome will curtail or terminate her current business endeavors (Broomeco, Ex. #1).

77. Ms. Broome has been a State Farm Insurance agent since 1983, and is presently the sole owner of an established State Farm Insurance Agency in Jacksonville, Florida (Broomeco, Ex. #1; Tr. 759). In her capacity as owner of an insurance agency, she devotes approximately 55 to 60 hours a week to the business. Ms. Broome is an independent contractor and, as such, is not required to devote a specific amount of time to the Agency; however, she is required to consider the Agency business her principal occupation (Broomeco, Ex. #1). In the event that Broomeco receives the permit for the Fernandina Beach facility, it is Ms. Broome's preference that she retain her ownership interest in the insurance agency (Tr. 644), if she could decrease the amount of time devoted to the insurance business to approximately two to three hours on the weekends (Broomeco, Ex. #1). Ms. Broome is prepared, however, in the event that State Farm does not agree to this arrangement, to terminate her association with State Farm in order to satisfy her integration proposal (Broomeco, Ex. #1). According to her testimony, Ms. Broome has already discussed the possibility of resigning from her agency with State Farm, and she has been advised that she would not incur any financial penalty if she does so (Tr. 647).

78. Ms. Broome, a black American, has lived in Jacksonville, Florida, outside the proposed service area, since 1979 (Broomeco, Ex. #1). In the event that Broomeco receives the permit, she will establish a residence in Fernandina Beach, Florida (Broomeco, Ex. #1). From 1987 to 1989, Ms. Broome has served on the Board of Volunteers for "Volunteers Jacksonville", a clearinghouse for volunteer activities throughout Jacksonville, Florida and its surrounding communities which include the proposed service area, and, since 1986, on the Board of INROADS, INC., a national organization facilitating placement of minority students in employment positions with major companies. In addition, Ms. Broome, since 1990, has been a member of the United Way Family Counseling Service Board, the Florida Judicial Nomination Commission (Fourth Judicial Circuit) for a term of service from 1990 to 1994, the Jacksonville Junior League's Community Relations Committee from 1986 to 1987, the Jacksonville Girl Scouts from 1980 to 1986, and for eight years, the Jacksonville Big Brothers and Sisters. In 1986, Ms. Broome received an award for her work with the Jacksonville Brothers and Sisters (Broomeco, Ex. #1).

Auxiliary Power

79. In the event that its application is granted, Broomeco will install an auxiliary power generator at its transmitter and studio locations in order to ensure continuous service in the event of a power failure (Broomeco, Ex. #1).

CONCLUSIONS OF LAW

Diversification

80. The Broomeco application is not subject to a diversification demerit.

Best Practicable Service

81. Ms. Broome was approached by a Mr. Helfrich who told her that he had a friend who wanted to know the name of someone who might be interested in applying for a radio station (Tr. 588). The friend was later identified as Skip Brooks, the owner of Benchmark Telecommunica-

tions (Tr. 589). Mr. Helfrich arranged a meeting between Ms. Broome and Mr. Brooks (Tr. 589). They were joined by Mr. Helfrich, and the meeting lasted for approximately 45 minutes (Tr. 590). Mr. Brooks, in turn, located Billy Joe Rutledge, who is Broomeco's sole non-voting shareholder, and suggested his name to Ms. Broome as a potential investor in the application (Tr. 596). Ms. Broome called Mr. Rutledge (Tr. 596-97), who did not appear at that time to know who Ms. Broome was (Tr. 597). During the course of a twenty minute conversation, Ms. Broome talked to him about her career and her family, how close she lived to Fernandina Beach, Florida, and the degree of her involvement in the Fernandina Beach community (Tr. 599). According to her testimony, Ms. Broome learned very little, including the state of his finances, about Mr. Rutledge during the course of this conversation (Tr. 599, 606).

82. Mr. Brooks arranged for the preparation of Broomeco's corporate documents (Tr. 608), and he also prepared the engineering portion of Broomeco's application (Tr. 614). Broomeco has not been billed for these services (Tr. 614). Benchmark Telecommunications also obtained the reasonable assurance of the availability of Broomeco's transmitter site (Tr. 621; Fernandina Beach FM, Ex. #13), and Benchmark Telecommunications also prepared Broomeco's budget (Tr. 623). Ms. Broome did not obtain any of the information contained in the budget (Tr. 623; Fernandina Beach FM, Ex. #14), and she did not discuss with anyone the information contained therein (Tr. 625). Indeed, she appeared at her deposition to be unfamiliar with Broomeco's budget. For example, Ms. Broome could not identify what fell under the line item of General Administrative Expenses (Tr. 628-29), and she could not explain, at her deposition, how the $500,000 figure for the cost of construction and initial operations was derived from the total budget figure of $572,409 (Tr. 635-36).

83. As of the date of Ms. Broome's deposition, Broomeco did not have a checking account (Tr. 637). The Corporation's bills were paid out of Mr. Rutledge's personal checking account, and Mr. Rutledge signed the checks (Tr. 639). Ms. Broome is not obligated to contribute money to the venture (Tr. 686-87).

84. Prior to the time Mr. Brooks mentioned Mr. Rutledge's name, Ms. Broome had never heard of him (Tr. 596). Similarly, Mr. Rutledge's decision to enter into the venture with Ms. Broome was based solely on the telephone conversation that he had with her and her resume. Ms. Broome did not conduct an investigation into Mr. Rutledge's background or ask him about his financial situation (Tr. 606, 667-68), and did not actually meet him until the date of her deposition in this proceeding (Tr. 601).

85. Mr. Brooks was clearly the facilitator in this matter. He, in effect, brought the voting shareholder, Ms. Broome and Mr. Rutledge, the non-voting share holder, together. He arranged for the preparation of Broomeco's corporate documents, and he prepared Broomeco's engineering. Despite these significant activities on behalf of the applicant, Mr. Brooks has never presented Broomeco with a bill for his services. Ms. Broome, at the same time, appears to have been disengaged from the whole process. She was unfamiliar with the state in which Broomeco was to be incorporated (Tr. 610), and she had no knowledge of approving Broomeco's Certificate of Incorporation (Tr. 611). Although Broomeco was incorporated on November 20, 1989, Ms. Broome did not receive a copy of the Certificate of Incorporation until November 27, 1989 (Tr. 612-13). Ms. Broome was unable to say whether or not she saw the amendment creating the Corporation's Class B stock prior to its being filed (Tr. 693), and she had no knowledge of the events surrounding the filing of the amendment (Tr. 694). Ms. Broome and Mr. Rutledge never discussed the form the business would take (Tr. 601), or how much stock each person would own. In addition, Ms. Broome and Mr. Rutledge did not discuss the amount of money Mr. Rutledge was willing to commit to the venture (Tr. 664-66), and she had no knowledge of how the information concerning Mr. Rutledge became a part of the application (Tr. 615). They did, however, discuss another attorney recommended by Mr. Brooks (Tr. 688-89), and, in August 1991, agreed that another attorney should review the status of Broomeco's application (Tr. 688-89). They also discussed the possibility of increasing Broomeco's proposed power (Tr. 763).

86. The manner in which Broomeco was formed and the lack of familiarity displayed by Ms. Broome with the application and its prosecution, belies Broomeco's claim that Ms. Broome will be in complete control of the enterprise. The record demonstrates that the applicant was formed in a very casual manner. No effort was made by either person involved in the Corporation to investigate the other person's background, or, indeed, to familiarize themselves with their rights and obligations under the agreement. The whole process was initiated by an individual unknown to Ms. Broome. He, in turn, sought out an investor who was and is the sole source of funds for prosecuting the application. This was done at no cost to Ms. Broome or to Broomeco. Ms. Broome could not explain Mr. Brook's willingness to take the steps necessary to bring these parties together without being reimbursed by either Ms. Broome or Broomeco. The only credible explanation for these efforts is that he was working on behalf of Mr. Rutledge and would look to him for his reward.

87. It is simply not credible that Broomeco's active/passive ownership structure will be maintained. Ms. Broome has no broadcast experience, has contributed little to the prosecution of the application, and is under no obligation to pay any portion of the application's prosecution expenses. Broomeco would have us believe that the partner who had made virtually the entire financial commitment to the enterprise would turn over control to an individual with no obligation to contribute funds to the applicant; an individual that he scarcely knows, and who he did not meet until the depositions were taken in this proceeding, based solely on a telephone conversation and a resume. The conversation between the two, by Ms. Broome's own admission, was lacking in specifics. She mentioned that they did not discuss the business form the applicant would take, or how much stock each person would own, or the amount of money that Mr. Rutledge would commit to the venture. The fact that Mr. Rutledge early on paid some of the Corporation's bills from his own personal checking account, although apparently directed to do so by Ms. Broome, gives further credence to the contention that actual control lies with Mr. Rutledge. The Presiding Judge concludes, therefore, that Broomeco is entitled to a quantitative integration credit equal only to the sum total of Ms. Broome's equity interest in the Corporation, based on her representation that she will be integrated into the affairs of the proposed station, at a management level position, on a full-time basis. Finally, Ms. Broome is presently the owner of a State Farm insurance agency, which she would like to retain, if possible (Tr. 644-45; Broomeco

Ex. #1, p. 2-3). She proposes to assign the management of the business to two women who are currently in school and her current office manager (Tr. 644-45; Broomeco Ex. #1, p. 2). She would, however, continue to devote 2-3 hours per week to the business primarily on monitoring the premium fund (Broomeco, Ex. #1, p. 2). It does not appear that the reduced commitment to her agency, in the event that this arrangement is agreeable to State Farm, will interfere with her full-time commitment to the station. However, if this arrangement is not satisfactory to State Farm, she proposes to resign her agency (Broomeco, Ex. #1, pp. 2-3). There is no evidence of record that Ms. Broome will be unable to do so, or that such termination would involve a financial penalty to her (Tr. 647).

88. Ms. Broome presently lives outside the proposed service area. In the event that Broomeco is the successful applicant, she will move to Fernandina Beach, Florida. Accordingly, her quantitative integration credit is entitled to a qualitative enhancement for her proposal to move to Fernandina Beach, Florida in the event that her application is granted. Ms. Broome also claims civic involvement within the service area of her proposed station. The only specific evidence of such involvement is her statement to the effect that (1) she visited a site for Volunteer Jacksonville in Fernandina Beach, (2) that her meetings for the Jacksonville Junior League were held within the service area, (3) that the Jacksonville Big Brothers and Sisters had a satellite office within the service area (Tr. 655), and (4) that she is a member of the Florida Judicial Nominating Committee (Tr. 656). There is no evidence of record that Ms. Broome, herself, performed volunteer work for any organization within the service area (Tr. 650-56), or that her membership in or her involvement with anyone of these organizations, provided Ms. Broome with a better understanding of the needs and interests of the service area.

89. The Broomeco application is entitled to further comparative credit for its proposal to install an auxiliary power source at its studio and transmitter locations.

The Broomeco Misrepresentation/Lack of Candor Issue

90. As noted above, the Presiding Judge designated an issue against Broomeco to look into the facts and circumstances surrounding Broomeco's request that the Federal Aviation Administration (FAA) approve its proposed antenna site. Broomeco originally proposed to operate with three kilowatts of power (Broomeco, Ex. #2, p. 1). It subsequently sought to amend its application on April 23, 1990 to specify an operation with six kilowatts of power instead of 3 kilowatts (Broomeco, Ex. #2, p. 1). According to the evidence of record, Ms. Broome reviewed the amendment prior to its filing with the Federal Communications Commission (First Coast, Ex. #7, p. 11), and Broomeco represented to the Commission at the time it filed its amendment that the FAA had been notified of the amendment (First Coast, Ex. #7, p. 11). The record establishes, however, that despite this representation, the FAA was not notified of this amendment at the time that it was filed (First Coast, Ex. #7, p. 11-12). The FAA was not informed of this amendment until September 12, 1990 (Broomeco, Ex. #2, p. 2, Attachment A).

91. On May 18, 1990, The FAA issued a determination of no hazard to air navigation for Broomeco's three kilowatt operation (Broomeco Ex. #2, p. 2), which was later suspended, due to potential electromagnetic interference (Broomeco, Ex. #2, p. 2). In the September 12, 1990 letter to the FAA referenced above, Broomeco informed the Administration that it would further amend its application before this Commission to specify three kilowatts of power once the three kilowatt operation had been approved (Broomeco, Ex. #2, p. 2, Attachment A). The FAA reinstated its determination of no hazard to air navigation for Broomeco's three kilowatt operation on September 27, 1990 (Broomeco, Ex. #2, p. 3). Despite this representation to the FAA, Broomeco never amended its application back to a three kilowatt operation until after the request for the designation of misrepresentation/lack of candor issues against Broomeco was granted by the Undersigned (Broomeco Ex. #2, pp. 3, 4).

92. Ms. Broome received a copy of the September 12, 1990 letter to the FAA on or about September 25, 1990 (Broomeco, Ex. # 2, p. 3, Attachment E). By letter dated March 13, 1991, Ms. Broome learned from her former counsel that her application was the only one that did not have a air hazard issue designated against it (Tr. 775-76; Broomeco, Ex. #2, p. 3); and that Broomeco might win by default if it could prevent the other applicants from amending to show FAA approval (Broomeco, Ex. #2, p. 3). According to her testimony, it appeared at the time that this strategy might pay off (Tr. 779-80). Ms. Broome understood that her station at six kilowatts would reach a larger area than a station proposing three kilowatts of power (Tr. 763), and that this was a good thing in terms of Broomeco's application (Tr. 764). Despite her awareness of these factors, Ms. Broome, insists that she was ignorant of the matters relating to the FAA clearance of her proposal (Tr. 774-75, 777, 778-79, 795, 796); and that she referred all these matters to her engineering consultants (Tr. 779).

93. The conclusion is inescapable that Broomeco had the responsibility of notifying the Commission, at the very latest, after the release of the HDO that it had approval for only a three kilowatt operation. It failed to do so. Broomeco concealed this important bit of information from the Commission, and Broomeco was prepared to accept the comparative advantage its seemingly "approved" six kilowatt operation would afford it. Ms. Broome claims to have been ignorant of this very serious omission. However, it is established policy of this Commission that an applicant is charged with knowledge of the steps taken in the prosecution of its application. This is certainly the case here where the person claiming exemption from this responsibility is the purported sole active partner in the enterprise. Furthermore, Ms. Broome, is an experienced business woman, who undoubtedly is required to keep abreast of what directly affects her business. It is inconceivable, therefore, that she would fail to keep informed of the steps being taken to advance this venture. The evidence of record, in fact, is to the contrary. For example, Ms. Broome sent a copy of a July 20, 1990 letter from the FAA to Mr. Brooks with the notation "What does this mean" (Broomeco, Ex. #2, p. 2, Attachment C), which indicates that she not only was being kept informed of the progress of the Broomeco application, but was ready and able to take steps to clarify matters of relevance to the Broomeco application. Broomeco cannot, therefore, escape responsibility for its failure to keep the Commission informed of changes in its proposal with direct bearing on its competitive standing by claiming that it relied on counsel and its engineer to keep the Commission properly informed. See, *Hillebrand* 1 F.C.C. Rcd. 419, 420 n.6. Accordingly, the Presiding Judge finds that Broomeco mislead and delib-

erately attempted to conceal matters of substance from this Commission, and that by doing so, it has shown that it is not qualified to be a Commission licensee.

COMPARATIVE COVERAGE

94. The total areas and populations within each applicant's proposed 1 mV/m contour is as follows:

Total Areas and Populations Served

Applicant	Area (Sq.Km.)	Population
Broomeco	1,225	69,880
Fernandina Beach FM	1,225	69,880
First Coast	1,180	56,890
Godwin	1,180	56,890
MBI	1,030	55,130
Secrest	1,030	55,130
Metcalf	975	50,740

The entire area to be served pursuant to the various proposals is currently served by five or more FM stations. None of the applicants will provide service to underserved areas.

95. Broomeco and Fernandina Beach FM are both entitled to a very slight comparative preference for their proposed service to between 23 percent and 38 percent more people than would be served by any of the other applicants. The remaining five applicants, which propose to serve between 50,740 and 56,890 people, are not entitled to any preference as among themselves.

ULTIMATE CONCLUSIONS

96. As noted above, Broomco has been disqualified. Fernandina Beach FM and First Coast are entitled to significantly less than a 100 percent quantitative integration credit, and First Coast's application is also subject to a diversification demerit. Accordingly, the Presiding Judge finds that the decision as to which applicant proposes a superior service must be made among the remaining Applicants, Ms. Godwin, Mr. Secrest and Ms. Metcalf. All three are entitled to a 100 percent quantitative integration credit and none of their applications is subject to a diversification demerit. As amongst themselves, none is entitled to a coverage preference and all three propose to install an auxiliary power source at their studio and transmitter sites. Of the three, however, only Ms. Godwin and Ms. Metcalf are entitled to a local ownership credit of 100 percent, a factor which distinguishes their applications from that of Mr. Secrest, and places their applications at a comparative advantage with respect to the Secrest application. The choice, therefore, as to the superior proposal is between Ms. Godwin's and Ms. Metcalf's.

97. Ms. Godwin has lived within the proposed service area her entire life, and within the city of license virtually the entire time except for the period between August 1969 and September 1971 and August 1988 and March 1989. Her civic involvement appears to have been more significant than Ms. Metcalf's, and she is, in addition, entitled to a slight, additional credit for her past broadcast experience. Ms. Metcalf's residence within the service area has been significantly shorter than that of Ms. Godwin, and, as noted above, her civic inolvement less significant. The Presiding Judge concludes, therefore, after weighing the various comparative factors, that Ms. Godwin's proposal would best serve the public interest, and her application will be granted.

RULINGS

Accordingly, IT IS ORDERED that unless an appeal from this Initial Decision is taken by a party, or the Commission reviews this Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Commission's Rules, 47 C.F.R. 1.276, the application of Annette B. Godwin (File No. BPH-891129MF) for authority to construct a new FM station on Channel 287A in Fernandina Beach, Florida IS GRANTED; and that the applications of Fernandina Beach FM Limited Partnership (File No. BPH-891129MH), Martin A. Secrest (File No. BPH-891130MH), First Coast Broadcasting, Inc. (File No. BPH-891130ML), Emily Metcalf (File No. BPH-891130MO), Mardirossian Broadcasting, Inc. (File No. BPH-891130MP), and Broomeco Broadcasting, Inc. (File No. BPH-891130MR) ARE DENIED.[1]

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Gonzalez
Administrative Law Judge

[1] In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Section 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-636

In re Applications of

THE MIRKWOOD GROUP File No. BPH-890412MH

BACH 'N' ROLL RADIO OF BRANDON, INC. File No. BPH-890413NG

For Construction Permit for a
New FM Station on Channel 268A
in Brandon, Vermont

Appearances

John M. Pelkey, on behalf of Bach'n Roll Radio of Brandon, Inc.; *Donald E. Martin* and *Spencer W. Weisbroth* on behalf of The Mirkwood Group; and *Robert Zauner* on behalf of the Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOHN M. FRYSIAK

Issued: November 25, 1992; Released: December 3, 1992

PRELIMINARY STATEMENT

1. This proceeding involves the mutually-exclusive applications of Bach'n Roll Radio of Brandon, Inc. ("Bach'n Roll") and The Mirkwood Group ("Mirkwood") for a new FM station to operate in Brandon, Vermont.[1] A third applicant, Lewis Creek Broadcasters, Inc. ("Lewis Creek"), was dismissed for failure to prosecute its application. *See Order*, 91M-2884, released September 20, 1991. These mutually-exclusive applications had been set for hearing in *Hearing Designation Order* ("*HDO*"), 6 FCC Rcd 511 (1991). The *HDO* specified that, insofar as the Bach'n Roll and Mirkwood applications were concerned, the following issues were to be adjudicated:

> (1) To determine whether there is a reasonable possibility that the tower height and location proposed by Mirkwood would constitute a hazard to air navigation;
>
> (2)To determine which of the proposals would, on a comparative basis, best serve the public interest; and
>
> (3) To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

2. A prehearing conference was held on April 8, 1991 and hearings were held on September 10, 1991. The record in this proceeding was closed at the conclusion of the September 10, 1991 hearing. *Order*, FCC 91M-2817, released September 12, 1991.

Findings of Fact

Air Hazard Issue - The Mirkwood Group

3. The Commission added Issue 1 against Mirkwood to determine whether there is a reasonable possibility that Mirkwood's proposed station would constitute a hazard to air navigation. Although Mirkwood's proposed tower is not a structural or physical hazard, the FAA has determined that transmissions from Mirkwood's proposed antenna would cause excessive electro-magnetic interference ("EMI") (Mirkwood Ex. 4, Bach'n Roll Ex. 2). The matter of what standards to use in defining what constitutes an EMI hazard to air navigation, however, is currently the subject of negotiations between the FCC and the FAA (Mirkwood Ex. 4).

4. Pending resolution of those inter-agency negotiations, Mirkwood is willing to accept the following condition upon the grant of its application:

> Upon receipt of notification from the Commission that harmful interference is being caused by the operation of Mirkwood's transmitter, the licensee (or permittee) shall either immediately reduce the power to the point of no interference, cease operations, or take such other immediate corrective action as is necessary to eliminate the harmful interference. The condition expires after one year of interference-free operation (Mirkwood Ex. 4).

Standard Comparative Issue

The Mirkwood Group

5. Mirkwood is a Vermont limited partnership. It consists of one general partner and two limited partners. Mr. Michael Carr is the sole general partner of the partnership, with an ownership of 30 percent of the equity of the partnership (Mirkwood Ex. 1).

6. The limited partners of the partnership are Mr. Tim Hoehn, who owns a 30 percent limited partnership interest, and Mr. Gary Savoie, who owns a 40 percent limited partnership interest. All of the elements of the limited partnership have been memorialized in a limited partnership agreement (Mirkwood Ex. 1).

7. Although Mirkwood reported in its Integration and Diversification Statement, filed February 22, 1991, that the business of the limited partnership shall be under the exclusive management of the general partner and for whose partnership it claims 100 percent integration credit, at hearing Mirkwood stipulated that for the purposes of the analysis of the standard comparative issue, it is to be considered as if it were a general partnership (Tr. 12-13).

[1] The Brandon applications were filed for Channel 270A. By *Report and Order*, 6 FCC Rcd 1760 (1991) (Chief, Allocations Branch), the Brandon applicants were ordered to amend their applications to specify the use of Channel 268A, 6 FCC Rcd 1763. Bach'n Roll's amendment substituting Channel 268A for 270A was accepted by *Order*, FCC 92M-982, September 30, 1992, and Mirkwood's similar amendment was accepted by *Order*, FCC 92M-979, released September 29, 1992.

8. Michael Carr first learned of the allocation for Brandon, Vermont as a result of a casual reading of an "FM Advisory" published by Haley, Bader & Potts law firm made available to him at the radio station (WRFB) at which he worked (Tr. 43). He inquired of the general manager at WRFB about the application process and then contacted WRFB's engineer Gary Savoie (Tr. 44). The budget was prepared in part by Mr. Carr and in part by Mirkwood Engineering, a company of which Gary Savoie is the sole proprietor (Tr. 46). Money contributions to the partnership to cover the costs of prosecution of the Mirkwood application have been made only by Mr. Savoie (Tr. 48). Mr. Carr prepared the limited partnership agreement for Mirkwood (Tr. 59). Mr. Carr and the limited partners acted *pro se* until it was time to file the integration statement (Tr. 60).

9. Michael Carr, a 30 percent equity owner of Mirkwood, will become the general manager of the proposed station. He will devote not less than 40 hours per week on a fulltime permanent basis to his employment in this position. As the general manager, he will devise, determine and oversee the implementation of all station policies, and he will hire and supervise all department heads (Mirkwood Ex. 2, p. 1).

10. In order to effectuate his integration proposal, Mr. Carr will withdraw from all other employment and business pursuits which would interfere with his employment as the general manager of the proposed station. Mr. Carr has already notified his current employer that if Mirkwood's application is granted, he would resign from his current position (Mirkwood Ex. 2, p. 1).

11. Mr. Carr was born and raised in Brandon, Vermont, and lived there for 23 years. He moved away in the autumn of 1978. Mr. Carr currently owns the residence in Brandon, Vermont, at 21 Franklin Street, in which he was raised, and lived for 21 years. Mr. Carr has never lived outside of Vermont, and has never lived more than one hour's drive from Brandon (Mirkwood Ex. 2, p. 1).

12. Mr. Carr has maintained very close ties to the Brandon community. He returns regularly to Brandon, a couple of times each month, to visit his mother, who currently lives in the house at 21 Franklin Street. It is Mr. Carr's intention that if the Mirkwood application is granted, he will immediately return to Brandon, where he will reside on a fulltime basis (Mirkwood Ex. 2, p. 1-2).

13. Mr. Carr's involvement in Brandon community activities includes his membership, from 1974 until 1975, in the Brandon Area Rescue Squad. Mr. Carr served as an emergency medical volunteer with, and was a charter member of the First Response Emergency Medical Squad. Mr. Carr was on call, and prepared to respond to all types of community emergencies (Mirkwood Ex. 2, p. 2).

14. In 1975, the entire Town of Brandon police force was fired. The Brandon Board of Selectmen implemented emergency actions to supply Brandon with police protection. The Board appointed Mr. Carr to serve on the new force. At that time, he was a part-time deputy sheriff with the county sheriff's office. For several months, Mr. Carr was virtually Brandon's entire police force (Mirkwood Ex. 2, p. 2).

15. From 1971 until 1975, Mr. Carr was involved on a volunteer basis with recreational and vocational activities for the mentally retarded residents of the Brandon Training School for the Mentally Retarded. He supervised and participated in sports activities with the students (Mirkwood Ex. 2, p. 2).

16. In 1976, Mr. Carr coordinated and participated in a voter registration drive in Brandon. He registered voters, and assisted them with access to the polls. Through Mr. Carr's efforts and assistance, many citizens voted for the first time (Mirkwood Ex. 2, p. 2).

17. In 1979 until 1984, Mr. Carr designed and implemented training programs for the State of Vermont's Fuel Assistance Program. The training programs were designed to teach human service professionals, and advocacy groups for the elderly and for the poor within the Brandon community, about the fuel assistance program, and to help them further distribute the information about the program to needy recipients (Mirkwood Ex. 2, p. 3).

18. Mr. Carr worked regularly on weekends, and weekdays on a substitute basis, as an on-air personality at radio station WRFB, Stowe, Vermont, from September, 1987 until approximately the end of 1988. From the end of 1988, until January, 1990, he worked at WRFB doing radio production work on an as-needed basis (Mirkwood Ex. 2, p. 3).

19. Mr. Carr studied Communications Technologies at Castleton State College in Castleton, Vermont. While there, he was responsible for producing student television productions (Mirkwood Ex. 2, p. 3).

20. The Mirkwood Group does not hold any ownership interest in any medium of mass communications (Mirkwood Ex. 1). Neither Mr. Michael Carr, Mirkwood's general partner, nor Mr. Tim Hoehn, a Mirkwood limited partner, holds any ownership interest in any medium of mass communications (Mirkwood Ex. 1; 2, p. 3). Mr. Gary Savoie, a Mirkwood limited partner, is the permittee of a new FM broadcast station at Walpole, New Hampshire (File No. BPH-881215NB) (Mirkwood Ex. 1). Walpole, New Hampshire is approximately in excess of 100 kilometers from Brandon, Vermont (Tr. 18).

21. The Mirkwood Group proposes to install auxiliary power facilities at its transmitter and studio locations so that broadcast operations may continue in the event that electricity is not available from the local utility (Mirkwood Ex. 3).

Bach'n Roll Radio of Brandon, Inc.

22. Bach'n Roll is a corporation organized under the laws of the State of Vermont. The corporation has issued 100 shares of voting stock. Joan M. Bader holds 51 shares. Her husband, Michael H. Bader, holds 49 shares. Mrs. Bader is President of the corporation. Mr. Bader is Chairman of the Board of Directors of the corporation. Their son, Michael H. Bader, Jr., is Vice President and Treasurer of the corporation. He is also a member of the corporation's Board of Directors. He holds no stock in the corporation. The corporation has issued only one class of stock. All stock is voting stock (Bach'n Roll Ex. 1).

23. None of the Bach'n Roll principals will be integrated into the operation of the proposed facility (Bach'n Roll Ex. 1).

24. Joan M. Bader and Michael H. Bader jointly own 80 percent of the outstanding stock of The Pennsylvania Radioroad Company, Inc., licensee of WCBG(AM), Chamberburg, Pennsylvania, and WGLL(FM), Mercersburg, Pennsylvania. Mrs. Bader is Secretary, Treasurer and a

Director of the corporation. Mr. Bader is the Chairman of the Board and a Director of the corporation (Bach'n Roll Ex. 1).

25. Joan M. Bader and Michael H. Bader also jointly own 80 percent of the outstanding stock of Western Maryland Radioway Corporation, licensee of WTHU(AM), Thurmont, Maryland. Mrs. Bader is Secretary, Treasurer and a Director, and Mr. Bader is the Chairman of the Board and a Director of the corporation (Bach'n Roll Ex. 1).

26. Joan M. Bader and Michael H. Bader also jointly hold a limited partnership interest in EBE Communications Limited Partnership. This interest constitutes .7 percent of the total equity in EBE. EBE is the licensee of Radio Stations WCSE(AM)/WXTC-FM, Charleston, South Carolina; KFRE(AM)/KNAX(FM), Fresno, California; WMQX-AM/FM, Winston-Salem, North Carolina; WECK(AM), Cheektowaga, New York and WJYE(FM), Buffalo, New York (Bach'n Roll Ex. 1).

27. Each of the facilities in which Joan M. Bader and Michael H. Bader possess an ownership interest is located more than 200 miles from the proposed Brandon facilities (Bach'n Roll Ex. 1).

28. Bach'n Roll proposes to install auxiliary power facilities at its transmitter and studio locations so that the operation of the station can continue should the power supplied by the local utility fail or be interrupted (Mirkwood Ex. 3; Bach'n Roll Ex. 1).

Comparative Coverage

29. The applicants have stipulated that there is no significant difference in the areas or populations to be served by their respective proposed stations based upon the facilities proposed in the applicants' application (Joint Ex. No.1).

CONCLUSIONS OF LAW

Air Hazard Issue - Mirkwood

30. The air hazard issue specified against Mirkwood is predicated on the FAA's initial finding that the Mirkwood proposed facility might cause EMI. However, the matter of what standards to use in defining what constitutes an EMI hazard to air navigation is currently the subject of negotiations between the FCC and the FAA (Mirkwood Ex. 4). Pending resolution of those inter-agency negotiations, Mirkwood is willing to accept a grant of its application conditioned on its responsibility, for one year, to take whatever immediate corrective action is necessary to eliminate any harmful interference which may be caused by the operation of its proposed station. In light of the foregoing, the air hazard issue specified against Mirkwood IS RESOLVED in its favor.[2] *See e.g., Texas Communications Limited Partnership*, 5 FCC Rcd 1592 (1990), *aff'd*, 6 FCC Rcd 5191 (1991); *SPH Associates*, 6 FCC Rcd 4307 (1991).

Standard Comparative Issue

Diversification

31. *Mirkwood.* Mirkwood has stipulated that for the purposes of this proceeding its principals are to be considered as being general partners. The only media interest presently held by Mirkwood or its partners is that owned by Savoie who is a 40 percent equity owner, he being the permittee of a new FM broadcast station at Walpole, New Hampshire, a distance of about 100 kilometers from Brandon, Vermont. Proximity of other broadcast interest to the community of license is a key factor in determining diversification demerits. In regards to Mirkwood, however, it is noted that the ownership of the Walpole, New Hampshire station only controls 40 percent of the equity ownership of the Brandon, Vermont station. Under these circumstances the risk for concentration is slight and Mirkwood will be assessed a slight diversification demerit.

32. *Bach'n Roll.* Bach'n Roll's only two principals jointly own and control 80 percent of the voting stock of two separate corporations which in the aggregate own three broadcast stations. However, each of the stations controlled by Bach'n Roll's principals is located at least 350 miles from Brandon, Vermont. In light of this, Bach'n Roll will be assessed a slight diversification demerit.

33. Bach'n Roll argues that the closer proximity of the Walpole, New Hampshire station to Brandon, Vermont warrants a diversification preference for Bach'n Roll. The cases it cites in support of its proposition are inapposite. The significant factor herein is that only 40 percent of Mirkwood's equity ownership controls the Walpole, New Hampshire station. There is no record evidence that demonstrates that this same 40 percent equity ownership of Mirkwood will control Mirkwood. As noted above the risk for concentration is slight. Neither applicant herein is entitled to a diversification preference.

Integration of Ownership into Management

34. *Mirkwood.* Mirkwood maintains that it is a *bona fide* limited partnership under Vermont law. However, acknowledging pre-grant activity on the part of one of its limited partners (Savoie) Mirkwood has stipulated that it should be treated as if it were a general partnership. Of its three principals only Michael Carr is proposed for fulltime day-to-day management. He is a 30 percent equity owner. Mirkwood's proposal to incorporate Carr to fulltime, day-to-day management is credible. It is undisputed that Carr was the initiator of the Mirkwood application. He learned independently that there was an allocation being made for Brandon by reading, at the radio station where he worked, an "FM Advisory" published by the law firm representing the competing applicant herein. Subsequently, he consulted the general manager at the radio station where he worked about the application process. Mr. Carr then contacted Mr. Savoie, an engineer he knew professionally from working at the radio station (*Cf.* Tr. 43-46). Mr. Carr prepared the proposed budget for the Mirkwood station, completed the legal portion of the Mirkwood application, and retained counsel. Mr. Carr is also a former resident of the community of license where he had lived for 23 years. Mirkwood would have it noted that for most of the proceeding herein, Mirkwood operated *pro se*. It is deemed that the Mirkwood application is *bona fide*. The cases cited by Bach'n Roll in opposition are distinguishable. Mirkwood unilaterally and timely admitted that under Commission policy it is not entitled to limited partnership consideration in view of Mr. Savoie's post-organizational activity. Commission policy

[2] In light of the decision taken here, Mirkwood's Motion for Summary Decision, filed September 3, 1991 IS DEEMED MOOT.

permits the down grading of an application. There is no record evidence that Mirkwood intended to submit a sham application.

35. The quantitative integration credit garnered by Mirkwood is qualitatively enhanced by Mr. Carr's past residence in the proposed community of license for 23 years, and for his promise to move back to the proposed community of license should Mirkwood's application be granted. This integration credit is further enhanced slightly by the civic activities of Mr. Carr in the proposed service area.

36. Mirkwood is also entitled to a slight enhancement for Mr. Carr's broadcast experience.

37. *Bach'n Roll.* Bach'n Roll is entitled to no quantitative or qualitative integration credit.

ULTIMATE CONCLUSIONS

38. Mirkwood is a clear winner. Under FCC diversification criteria neither applicant gets a preference. Under FCC integration criteria, Mirkwood proposes integration of 30 percent of its ownership. Mirkwood is the preferred applicant inasmuch as Bach'n Roll proposes no integration.

Accordingly, IT IS ORDERED that unless an appeal from this Initial Decision is taken by a part, or the Commission reviews the decision on its own motion in accordance with Section 1.276 of the Rules, the application of The Mirkwood Group (File No. BPH-890412MH) IS GRANTED, subject to the condition stated below:

> Upon receipt of notification from the Commission that harmful interference is being caused by the operation of Mirkwood's transmitter, the licensee (or permittee) shall either immediately reduce the power to the point of no interference, cease operations, or take such other immediate corrective action as is necessary to eliminate the harmful interference. The condition expires after one year of interference-free operation (Mirkwood Ex. 4).

IT IS FURTHER ORDERED that the application of Bach'n Roll Radio of Brandon, Inc. (File No. BPH-890413NG) IS DENIED.[3]

FEDERAL COMMUNICATIONS COMMISSION

John M. Frysiak
Administrative Law Judge

[3] In the event exceptions are not filed within 30 days after the release of this Initial Decision and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Rule 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Liability of
Channel 33, Inc.

Licensee of Television Station
KFBT, Las Vegas, NV

For a Forfeiture

MEMORANDUM OPINION AND ORDER

Adopted: November 30, 1992; Released: December 4, 1992

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief of the Mass Media Bureau acting pursuant to authority delegated by Section 0.283 of the Commission's Rules, has under consideration (1) a $12,500 Notice of Apparent Liability (NAL)[1] issued May 27, 1992, to Channel 33, Inc., (Channel 33), licensee of Station KFBT(TV), Las Vegas, Nevada; and (2) Channel 33's response to the NAL filed June 23, 1992.

2. The NAL was issued for an apparent violation of the anti-lottery broadcast provisions of the United States Code, 18 U.S.C. Section 1304 and Section 73.1211 of the Commission's Rules. The Commission found the licensee promoted lottery activities by broadcasting a commercial that stated: "Sam's Town has two floors of casino excitement and lots of liberal slots." The facts are set forth in full detail in the NAL, are uncontroverted, and will not be repeated here.

3. Channel 33 does not contest its liability in this matter, but presents the following in an effort to mitigate the forfeiture. First, the licensee points to its conduct during and after the violation. Specifically, it claims it was not reckless in failing to give careful review to "Senior Aerobics," a bartered program, on which the advertisements appeared. It seeks to excuse this failure on the grounds that it had no reason to suspect that a program of that nature at that time period (7:00 - 7:30 a.m. weekdays) would contain a lottery advertisement. As another example of good conduct the licensee states that it cooperated with the Commission. Second, Channel 33 requests mitigation based on its previous compliance record. Third, the licensee seeks a reduction based on its assertion that it is a small station with limited financial resources.

4. The licensee's conduct during and after the violation does not provide a cause for mitigation. The NAL found an apparent violation for Channel 33's *willful* behavior, and the asserted lack of reckless behavior, even if true, is not cause for mitigation. Rather, Channel 33's statement that it "had no reason to assume that the bartered ("Senior Aerobics") program would contain any advertising which would violate the FCC's anti-lottery rules" indicates a serious misunderstanding of its responsibilities. Channel 33 is reminded that all licensees are responsible for compliance with the Commission's Rules for *all* programming that they broadcast. And, as the Commission has previously stated, forfeitures were authorized ". . . to impel broadcast licensees to become familiar with the terms of their licenses and the applicable Rules, and to adopt procedures, including periodic review of operations, which will ensure that stations are operated in substantial compliance with their licenses and the Commission's Rules." *Southern California Broadcasting Company*, 6 FCC Rcd 4387 (1991) (citing *Crowell-Collier Broadcasting Corp.*, 44 FCC 2444, 2449 (1961)). Further, Channel 33, like all Commission licensees, has a duty to cooperate with the Commission in responding to inquiries and will not receive forfeiture reduction for so doing.

5. Next, the licensee seeks forfeiture reduction for its previous compliance record. Section 503(b)(2)(D) of the Communications Act of 1934, as amended requires the Commission to determine the amount of a forfeiture penalty by considering, among other things, the violator's "history of prior offenses." This consideration is reflected in our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *on recon.*, 7 FCC Rcd 5339 (1992), *pet. for review pending sub nom. USTA v. FCC*, No. 92-1321 (D.C. Cir. filed July 30, 1992). Our review of the relevant compliance history confirms that Channel 33's record of overall compliance is good. Taking this into account, we are persuaded that the total forfeiture of $12,500 should be reduced to $10,000.

6. No reduction is warranted, however, based on Channel 33's claim of financial hardship. Channel 33 has failed to submit a profit and loss statement prepared under generally accepted accounting principles as required (see pargraph I(B) of the Attachment to the NAL) to support its claim of financial hardship.

7. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, IT IS ORDERED that Channel 33, Inc., licensee of Television Station KFBT(TV), Las Vegas, Nevada, FORFEIT to the United States of America the sum of Ten Thousand Dollars ($10,000) for the willful and repeated violation of 18 U.S.C. Section 1304 and Section 73.1211 of the Commission's Rules which occurred from June 1, 1990, through August 24, 1990. Payment of the forfeiture may be made by mailing to the Commission, a check or similar instrument payable to the Federal Communications Commission. In regard to this forfeiture proceeding, the licensee may take any of the actions set forth in Section 1.80 of the Commission's Rules, as summarized in the attachment to this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

FOOTNOTE

[1] *Channel 33 Inc.*, 7 FCC Rcd 3224 (MMB 1992).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Hawk Computers NAL/Acct. No.: 315HF0003
San Jose, California

NOTICE OF APPARENT LIABILITY

Adopted: November 27, 1992; Released: December 4, 1992

By the Field Operations Bureau:

I. INTRODUCTION

1. This is a Notice of Apparent Liability for Monetary Forfeiture issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), to Hawk Computers for willful and continuing violation of Section 2.946(a) of the Rules, 47 C.F.R. § 2.946(a).

2. The appropriate amount of forfeiture for this violation is $10,000.

II. BACKGROUND

3. On October 4, 1991, the Commission Authorization and Evaluation Division requested that Hawk Computers submit a sample of a personal computer, FCC ID: HSG2TA386AA10, for verification that models being marketed under that FCC ID continue to comply with certification requirements. See 47 C.F.R. § 2.945. The Equipment Authorization had been granted on July 17, 1989.

4. A signed, Domestic Return Receipt, PS Form 3811, was received by the Commission indicating delivery of the request on October 8, 1991.

5. No sample, request for an extension of time to respond, or correspondence of any kind has been received from Hawk Computers.

III. DISCUSSION

6. Hawk Computers has violated Section 2.946(a) of the Rules by failure to supply the requested sample.

7. The violation is willful and has continued since November 7, 1991.

8. Pursuant to our Policy Statement, Standards for Assessing Forfeitures, 6 FCC Rcd 4695 (1991), modified in part on recon., 7 FCC Rcd 5339 (1992), the base forfeiture amount for failure to respond to Commission communications is $7,000. Because of the egregious, continuing nature of the violation, we are increasing it to $10,000. No further adjustments appear warranted.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, that Hawk Computers IS APPARENTLY LIABLE FOR A MONETARY FORFEITURE in the amount of $10,000 for failure to respond to Commission communications in violation of Section 2.946(a) of the Rules. The amount specified was determined after consideration of the factors set forth in Section 503(b) of the Communications Act.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80(f)(3) of the Commission's rules, 47 C.F.R. § 1.80(f)(3), that Hawk Computers shall, within thirty (30) days of the release of this Notice, pay the full amount of the forfeiture or file a written response showing why the forfeiture should be reduced or not imposed. Any written response must include a detailed factual statement and supporting documentation. Forfeitures shall be paid by check or money order payable to the Federal Communications Commission. The remittance should be marked "NAL/Acct. No.: 315HF0003" and mailed to the following address:

Federal Communications Commission
P.O. Box 73482
Chicago, Illinois 60673-7482

Send written responses regarding why the forfeiture should be reduced or not imposed to:

Federal Communications Commission
Field Operations Bureau
Enforcement Division
Mail Stop 1500E3
1919 M Street, NW
Washington, D.C. 20554

NAL/Acct. No.: 315HF0003

11. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Monetary Forfeiture shall be sent to Hawk Computers, 2056 Bering Drive, San Jose, California 95131.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Richards
Chief, Enforcement Division
Field Operations Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Audiovox, Inc., NAL/Acct. No.: 315HF0004
Hauppauge, New York

NOTICE OF APPARENT LIABILITY

Adopted: November 27, 1992; Released: December 4, 1992

By the Field Operations Bureau:

I. INTRODUCTION

1. This is a Notice of Apparent Liability for Monetary Forfeiture issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), to Audiovox, Inc., for willful and continuing violation of Section 2.946(a) of the Rules, 47 C.F.R. § 2.946(a).

2. The appropriate amount of forfeiture for this violation is $10,000.

II. BACKGROUND

3. On July 31, 1991, the Commission Authorization and Evaluation Division requested that Audiovox, Inc., submit a sample of a Field Disturbance Sensor, Model APS-12, for verification that it comply with equipment authorization requirements.

4. A signed, Domestic Return Receipt, PS Form 3811, was received by the Commission indicating delivery of the request on August 13, 1991.

5. No sample, request for an extension of time to respond, or correspondence of any kind has been received from Audiovox, Inc.

III. DISCUSSION

6. Audiovox, Inc., has violated Section 2.946(a) of the Rules by failure to supply the requested sample.

7. The violation is willful and has continued since August 30, 1991.

8. Pursuant to our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *modified in part on recon.*, 7 FCC Rcd 5339 (1992), the base forfeiture amount for failure to respond to Commission communications is $7,000. Because of the egregious, continuing nature of the violation, we are increasing it to $10,000. No further adjustments appear warranted.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, that Audiovox, Inc., IS APPARENTLY LIABLE FOR A MONETARY FORFEITURE in the amount of $10,000 for failure to respond to Commission communications in violation of Section 2.946(a) of the Rules. The amount specified was determined after consideration of the factors set forth in Section 503(b) of the Communications Act.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80(f)(3) of the Commission's rules, 47 C.F.R. § 1.80(f)(3), that Audiovox, Inc., shall, within thirty (30) days of the release of this Notice, pay the full amount of the forfeiture or file a written response showing why the forfeiture should be reduced or not imposed. Any written response must include a detailed factual statement and supporting documentation. Forfeitures shall be paid by check or money order payable to the Federal Communications Commission. The remittance should be marked "NAL/Acct. No.: 315HF0004" and mailed to the following address:

Federal Communications Commission
P.O. Box 73482
Chicago, Illinois 60673-7482

Send written responses regarding why the forfeiture should be reduced or not imposed to:

Federal Communications Commission
Field Operations Bureau
Enforcement Division
Mail Stop 1500E3
1919 M Street, NW
Washington, D.C. 20554

NAL/Acct. No.: 315HF0004

11. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Monetary Forfeiture shall be sent to Audiovox, Inc., 150 Marcus Boulevard, Hauppauge, New York 11788.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Richards
Chief, Enforcement Division
Field Operations Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Precision Engineering Industries
Sun Valley, California

NAL/Acct. No. 315HF0005

NOTICE OF APPARENT LIABILITY

Adopted: November 27, 1992; Released: December 4, 1992

By the Field Operations Bureau:

I. INTRODUCTION

1. This is a Notice of Apparent Liability for Monetary Forfeiture issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), to Precision Engineering Industries for willful and continuing violation of Section 2.946(a) of the Rules, 47 C.F.R. § 2.946(a).

2. The appropriate amount of forfeiture for this violation is $10,000.

II. BACKGROUND

3. On June 28, 1991, the Commission Authorization and Evaluation Division requested that Precision Engineering Industries submit a sample of a transmitter and receiver, FCC ID: GZZ3M8PE3R and GZZ3M8PE3T, for verification that models being marketed under these FCC IDs continue to comply with equipment authorization requirements. See 47 C.F.R. § 2.945.

4. A signed, Domestic Return Receipt, PS Form 3811, was received by the Commission indicating delivery of the request.

5. No sample, request for an extension of time to respond, or correspondence of any kind has been received from Precision Engineering Industries.

III. DISCUSSION

6. Precision Engineering Industries has violated Section 2.946(a) of the Rules by failure to supply the requested sample.

7. The violation is willful and has continued since July 28, 1991.

8. Pursuant to our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *modified in part on recon.*, 7 FCC Rcd 5339 (1992), the base forfeiture amount for failure to respond to Commission communications is $7,000. Because of the egregious, continuing nature of the violation, we are increasing it to $10,000. No further adjustments appear warranted.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, that Precision Engineering Industries IS APPARENTLY LIABLE FOR A MONETARY FORFEITURE in the amount of $10,000 for failure to respond to Commission communications in violation of Section 2.946(a) of the Rules. The amount specified was determined after consideration of the factors set forth in Section 503(b) of the Communications Act.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80(f)(3) of the Commission's rules, 47 C.F.R. § 1.80(f)(3), that Precision Engineering Industries shall, within thirty (30) days of the release of this Notice, pay the full amount of the forfeiture or file a written response showing why the forfeiture should be reduced or not imposed. Any written response must include a detailed factual statement and supporting documentation. Forfeitures shall be paid by check or money order payable to the Federal Communications Commission. The remittance should be marked "NAL/Acct. No.: 315HF0005" and mailed to the following address:

Federal Communications Commission
P.O. Box 73482
Chicago, Illinois 60673-7482

Send written responses regarding why the forfeiture should be reduced or not imposed to:

Federal Communications Commission
Field Operations Bureau
Enforcement Division
Mail Stop 1500E3
1919 M Street, NW
Washington, D.C. 20554

NAL/Acct. No.: 315HF0005

11. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Monetary Forfeiture shall be sent to Precision Engineering Industries, 11385 Suddington Street, Sun Valley, California 91352.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Richards
Chief, Enforcement Division
Field Operations Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications
Contract Tariff F.C.C. No. 42 — Contract Tariff Transmittal No. 92

ORDER

Adopted: November 20, 1992; Released: November 20, 1992

By the Chief, Tariff Division, Common Carrier Bureau:

1. On November 9, 1992 AT&T Communications (AT&T) filed the captioned tariff revisions which are scheduled to become effective November 23, 1992 on 14 days' notice pursuant to the Commission's *IXC Order*.[1] That Order establishes streamlined tariff review for filings that are presumed lawful. This filing introduces Contract Tariff No. 42 for AT&T Accunet Spectrum of Digital Services, Accunet T1.5 Service, Accunet T 45 Service, Dataphone Digital Service, and Local Channel Services.

2. On November 16, 1992 Sprint Communications Company Limited Partnership (Sprint) filed a petition to reject or suspend and investigate Contract Tariff Transmittal No. 92.

3. The Common Carrier Bureau has reviewed AT&T Communications Contract Tariff No. 42, Contract Tariff Transmittal No. 92 and Sprint's petition. We conclude that the filing does not warrant rejection because it does not, on its face, conflict with a statute or with an agency regulation or order. We further conclude that the petition does not demonstrate that an investigation is warranted at this time.

4. Accordingly, IT IS ORDERED that the petition to suspend and investigate AT&T Communications Contract Tariff F.C.C. No. 42, Contract Tariff Transmittal No. 92, filed by Sprint Communications Company Limited Partnership IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Tariff Division
Common Carrier Bureau

[1] Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880, *reconsidered in part*, Memorandum Opinion and Order, 6 FCC Rcd 7569 (1991), *further recon.*, Memorandum Opinion and Order, 7 FCC Rcd 2677 (1992).

Before the
Federal Communications Commission
Washington, D.C. 20554

ET Docket No. 92-9

In the Matter of

Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies	RM-7981 RM-8004

ORDER EXTENDING TIME FOR COMMENTS AND REPLY COMMENTS

Adopted: November 24, 1992; Released: November 24, 1992

Comment Date: December 11, 1992
Reply Comment Date: January 13, 1993

By the Office of Engineering and Technology:

1. On November 18, 1992, the Telecommunications Industry Association's Fixed Point-to-Point Communications Section (TIA) requested that the time for filing comments to the *Further Notice of Proposed Rule Making* (*Further Notice)* in the above-captioned proceeding be extended from December 4, 1992 to December 11, 1992. TIA's request was supported by Telesciences, Inc.

2. In its request, TIA argues that a 7-day extension would facilitate a consensus on technical implementation issues between fixed point-to-point microwave manufacturers and the major frequency coordinators of 2-11 GHz point-to-point spectrum. TIA asserts that an industry consensus is essential for ensuring a smooth transition of displaced 2 GHz fixed microwave users, efficient spectrum utilization, and competitiveness; and states that it has an industry working session scheduled for November 30 and December 1, 1992.

3. The Commission does not routinely grant extensions of time.[1] In this instance, however, we believe that extending the comment deadline by one week will serve the public interest by providing microwave manufacturers and major frequency coordinators additional opportunity to reach a consensus on the complex proposals set forth in the *Further Notice* and result in an improved record being submitted to the Commission. We also believe it in the public interest to extend the reply comment deadline correspondingly. Accordingly, IT IS ORDERED THAT the deadline for filing comments IS EXTENDED to December 11, 1992, and the deadline for filing reply comments IS EXTENDED to January 13, 1993.

4. This action is taken pursuant to authority found in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i) and 303, and pursuant to Sections 0.31, 0.241, and 1.46 of the Commission's Rules, 47 C.F.R. Sections 0.31, 0.241, and 1.46. For further information, contact Rodney Small, Office of Engineering and Technology, (202) 653-8116.

FEDERAL COMMUNICATIONS COMMISSION

Bruce A. Franca
Acting Chief Engineer

[1] 47 C.F.R. Section 1.46 (1991).

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN Docket No. 90-314

ET Docket No. 92-100

In the Matter of

Amendment of the Commission's Rules to Establish New Personal Communications Services	RM-7140, RM-7175, RM-7617, RM-7618, RM-7760, RM-7782, RM-7860, RM-7977, RM-7978, RM-7979, RM-7980
	PP-35 through PP-40, PP-79 through PP-85

ORDER EXTENDING TIME FOR REPLY COMMENTS

Adopted: November 24, 1992; Released: November 24, 1992

Reply Comment Date: January 8, 1993

By the Office of Engineering and Technology:

1. On November 20, 1992, the Cellular Telecommunications Industry Association, Inc. (CTIA) requested that the time for filing reply comments in the above-captioned proceeding be extended from December 9, 1992 to January 8, 1993. The National Association of Regulatory Utility Commissioners, Viacom International Inc., United States Telephone Association, Utilities Telecommunications Council, National Telephone Cooperative Association, and dBX Corporation joined in this request.

2. In their request, CTIA *et al.* argue that this extension is warranted by the need of parties to read and analyze the approximately 160 comments filed in response to the *Notice of Proposed Rule Making and Tentative Decision* (*Notice*) in this proceeding. CTIA *et al.* state that the large demand for copies of these filings has caused a delay in obtaining them from the Commission's copy contractor. Also, CTIA *et al.* contend that the proximity of the comment filing date in a related Commission proceeding, ET Docket No. 92-9, creates a time constraint for parties desiring to file in the instant proceeding.[1]

3. The Commission does not routinely grant extensions of time.[2] However, in this particular instance we concur with CTIA *et al.* that the unusually large volume of comments filed to the *Notice* that address a series of complex issues make it unreasonable for parties to be expected to complete a thorough analysis of these comments and draft reply comments in a 30-day period. In this instance, extending the reply comment deadline by 30 days will enhance the Commission's consideration of the issues raised in this proceeding and assist the Commission in ensuring that the public have the early benefit of personal communications services.[3] Therefore, we conclude that the 30-day extension requested by CTIA *et al.* is reasonable and will facilitate the Commission's consideration of this proceeding. Accordingly, IT IS ORDERED THAT the deadline for filing reply comments IS EXTENDED to January 8, 1993.

4. This action is taken pursuant to authority found in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i) and 303, and pursuant to Sections 0.31, 0.241, and 1.46 of the Commission's Rules, 47 C.F.R. Sections 0.31, 0.241, and 1.46. For further information, contact Rodney Small, Office of Engineering and Technology, (202) 653-8116.

FEDERAL COMMUNICATIONS COMMISSION

Bruce A. Franca
Acting Chief Engineer

[1] The Office of Engineering and Technology today granted a one-week extension of time for filing comments and reply comments to the *Further Notice of Proposed Rule Making* in Docket 92-9. The new comment filing date is December 11, 1992; the new reply comment filing date is January 13, 1993.

[2] 47 C.F.R. Section 1.46 (1991).

[3] *See Notice* at para 7.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications	Contract Tariff
Contract Tariff	Transmittal No. 94
F.C.C. No. 44	

ORDER

Adopted: November 24, 1992; Released: November 24, 1992

By the Chief, Tariff Division, Common Carrier Bureau:

1. On November 10, 1992 AT&T Communications (AT&T) filed the captioned tariff revisions which are scheduled to become effective November 24, 1992 on 14 days' notice pursuant to the Commission's *IXC Order*.[1] That Order establishes streamlined tariff review for filings that are presumed lawful. This filing introduces Contract Tariff No. 44 for AT&T Megacom Service, AT&T Megacom 800 Service, AT&T 800 Service-Overseas, and AT&T 800 Service-Canada.

2. On November 17, 1992 MCI Telecommunications Corporation (MCI) and Sprint Communications Company L.P. (Sprint) filed petitions to reject or suspend and investigate Contract Tariff Transmittal No. 94.

3. The Common Carrier Bureau has reviewed AT&T Communications Contract Tariff No. 44, Contract Tariff Transmittal No. 94 and the petitions. We conclude that the filing does not warrant rejection because it does not, on its face, conflict with a statute or with an agency regulation or order. We further conclude that the petitions do not demonstrate that an investigation is warranted at this time.

4. Accordingly, IT IS ORDERED that the petitions to suspend and investigate AT&T Communications Contract Tariff F.C.C. No. 44, Contract Tariff Transmittal No. 94, filed by MCI Telecommunications Corporation and Sprint Communications Company L.P. ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Tariff Division
Common Carrier Bureau

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[1] Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880, *reconsidered in part*, Memorandum Opinion and Order, 6 FCC Rcd 7569 (1991), *further recon.*, Memorandum Opinion and Order, 7 FCC Rcd 2677 (1992).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications Transmittal No. 4557
Tariff F.C.C. No. 16

ORDER

Adopted: November 24, 1992; Released: November 25, 1992

By the Chief, Tariff Division, Common Carrier Bureau:

1. On November 4, 1992 AT&T Communications (AT&T) filed the captioned tariff revisions which are scheduled to become effective December 2, 1992 on 14 days' notice pursuant to the Commission's *IXC Order*.[1] That Order establishes streamlined tariff review for filings that are presumed lawful. This filing introduces a Multiple T1 Service Promotion.

2. On November 12, 1992, MCI Telecommunications Corporation (MCI) filed a petition to reject Transmittal No. 4557.

3. The Common Carrier Bureau has reviewed AT&T Communications Transmittal No. 4557 and MCI's petition. We conclude that the filing does not warrant rejection because it does not, on its face, conflict with a statute or with an agency regulation or order. We further conclude that the petition does not demonstrate that an investigation is warranted at this time.

4. Accordingly, IT IS ORDERED that the petition to reject AT&T Communications Tariff F.C.C. No. 16, Transmittal No. 4557, filed by MCI Telecommunications Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Tariff Division
Common Carrier Bureau

[1] Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880, *reconsidered in part*, Memorandum Opinion and Order, 6 FCC Rcd 7569 (1991), *further recon.*, Memorandum Opinion and Order, 7 FCC Rcd 2677 (1992).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications	Contract Tariff
Contract Tariff	Transmittal No. 95
F.C.C. No. 45	

ORDER

Adopted: November 25, 1992; Released: November 25, 1992

By the Chief, Tariff Division, Common Carrier Bureau:

1. On November 12, 1992 AT&T Communications (AT&T) filed the captioned tariff revisions which are scheduled to become effective November 26, 1992 on 14 days' notice pursuant to the Commission's *IXC Order*.[1] That Order establishes streamlined tariff review for filings that are presumed lawful. This filing introduces Contract Tariff No. 45 for AT&T Accunet Reserved Digital Service, Accunet T1.5 Service, and Terrestrial 1.544 Mbps Local Channel Services.

2. On November 19, 1992 Sprint Communications Company L.P. (Sprint) filed a petition to reject or suspend and investigate Contract Tariff Transmittal No. 95.

3. The Common Carrier Bureau has reviewed AT&T Communications Contract Tariff No. 45, Contract Tariff Transmittal No. 95 and Sprint's petition. We conclude that the filing does not warrant rejection because it does not, on its face, conflict with a statute or with an agency regulation or order. We further conclude that the petition does not demonstrate that an investigation is warranted at this time.

4. Accordingly, IT IS ORDERED that the petition to suspend and investigate AT&T Communications Contract Tariff F.C.C. No. 45, Contract Tariff Transmittal No. 95, filed by Sprint Communications Company L.P. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Tariff Division
Common Carrier Bureau

[1] Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880, *reconsidered in part*, Memorandum Opinion and Order, 6 FCC Rcd 7569 (1991), *further recon.*, Memorandum Opinion and Order, 7 FCC Rcd 2677 (1992).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-337
Phase II

In the Matter of

Regulation of International
Accounting Rates

ORDER ON RECONSIDERATION AND THIRD FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: November 17, 1992; Released: November 27, 1992

Comment Date: February 12, 1993
Reply Comment Date: March 12, 1993

By the Commission:

I. INTRODUCTION

1. On December 23, 1991, we issued a First Report and Order[1] (*International Resale Order*) in Phase II of the above-captioned proceeding[2] which established policies and rules concerning the resale of international private lines. Cable and Wireless Communications, Inc. (C&W)[3] and American Telephone and Telegraph Company (AT&T) filed petitions for reconsideration or clarification. In this Order, we grant C&W's petition asking the Commission to clarify that resale of international private lines for the provision of private line service is not subject to the *International Resale Order*'s equivalency requirement that an applicant demonstrate that equivalent resale opportunities exist in the destination country prior to authorization. We also grant in part and deny in part AT&T's petition asking the Commission to extend the scope of the Commission's international resale policy, and ask for comment on whether an equivalency requirement should apply to end user international private lines interconnected to the public switched network (PSN) at a U.S. carrier's central office.

II. BACKGROUND

2. In the *International Resale Order*, we adopted a policy to encourage the resale of international common carrier services as a means to exert downward pressure on current, above-cost international accounting and collection rates for common carrier services to and from the United States. Based on our experience in the U.S. domestic market, we found that public benefits, including increased demand, reduced prices for most services and the virtual elimination of the possibility of price discrimination, would flow from resale opportunities in the international telecommunications market. We also noted a growing recognition on the part of the international community that international resale can drive international accounting rates closer to cost. In light of these findings, we concluded that the public interest in cost-based international telecommunications services would be served by the encouragement of international resale, provided we took steps to ensure that such resale did not exacerbate the settlements deficit.[4]

3. In particular, we concluded that "one-way" resale, *i.e.*, the unilateral diversion of switched traffic to private lines, would have an adverse impact on the international settlements process, and would also fail to put any downward pressure on international accounting and collection rates. Permitting "one-way" resale would enable foreign carriers or administrations unilaterally to divert U.S.-destined switched traffic, for which U.S. carriers normally receive settlements payments under the international settlements policy, to private lines, thus evading the settlements policy.[5] Because interconnection with the destination foreign country's PSN would be prohibited, U.S. carriers would necessarily continue to route outbound traffic over switched lines and to pay the above- cost accounting rates. Thus, to protect the U.S. public interest we conditioned our resale policy by requiring U.S.-based carriers to permit resale of their international private lines only to those countries which affordresale opportunities equivalent to those available under U.S. law.[6] Specifically, we determined that an applicant seeking Section 214 authorization to resell an international private line for the purpose of providing a basic telecommunications service to a particular

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[1] Regulation of International Accounting Rates, CC Docket 90-337 Phase II First Report and Order (*International Resale Order*), 7 FCC Rcd 559 (1992).

[2] Regulation of International Accounting Rates, Phase I Report and Order, 6 FCC Rcd 3552 (1991); Regulation of International Accounting Rates, Phase II Further Notice of Proposed Rulemaking (Phase II Further Notice) 6 FCC Rcd 3434 (1991).

[3] C&W requested that we consider its petition as either a Petition for Clarification or a Petition for Reconsideration, as appropriate.

[4] *See International Resale Order* at 560. *See also* Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261 (1976), *recon.* 62 FCC 2d 588 (1977), *aff'd sub nom. American Telephone and Telegraph Company v. FCC*, 572 F. 2d 17 (2d Cir.), *cert. denied* 439 U.S. 875 (1978).

[5] The International Settlements Policy (ISP) requires uniform settlement rates, accounting rates and division of tolls for U.S. international carriers on parallel routes. The aim of the ISP is to prevent foreign telecommunications administrations from "whipsawing" U.S. carriers, or playing carriers off against each other to the disadvantage of the U.S. carriers and ratepayers. *See Mackay Radio and Telegraph Company, Inc.*, 2 FCC 392 (1936), *aff'd by the Commission en banc*, 4 FCC 150 (1937), *aff'd sub nom. Mackay Radio and Telegraph Co. v. F.C.C.*, 97 F.2d 641 (D.C. Cir. 1938).

[6] Because the resale of international switched services does not raise the same concerns, we did not apply this equivalency requirement to switched services. Indeed, U.S. carriers are required to permit unlimited resale of all international switched telecommunications services. *See International Resale Order* at 559, n.4. We also note that the *International Resale Order* did

country shall be required to demonstrate that the subject foreign country affords international private line resale opportunities equivalent to those available under U.S. law.[7]

4. As to reporting requirements, we amended Section 43.51 of our Rules to require U.S. carriers to file not only their operating agreements with other carriers, but also any arrangements for interconnection of a private line to the U.S. public switched network (PSN) when such private line is used for foreign communications.[8] We also required U.S. carriers to amend their tariffs for international private line service to reflect specifically our international resale policy.

III. DISCUSSION

A. C&W's Petition for Reconsideration or Clarification

1. Petition.

5. C&W requests the Commission to clarify that the international resale policy, and Rule 63.01(k)(5) promulgated to implement it, apply only to the resale of international private lines to provide switched services, and not to the resale of private lines to provide private line services to end-users. In support of its petition, C&W notes that the public interest rationale behind the *International Resale Order*'s equivalency requirement was to preclude the adverse impact of one-way resale on the international settlements process. C&W argues that the resale of international private lines for the provision of private line service does not raise the same concerns about unilateral diversion of switched traffic to private lines. C&W observes, however, that Section 63.01(k)(5) appears to apply to any resale of international private lines regardless of whether the resale carrier is providing switched or private line services to end-users, and thus extends far beyond the Commission's stated regulatory concerns in the *International Resale Order*. C&W argues that the application of Section 63.01(k)(5) must be narrowed as there was inadequate notice that the Commission might be contemplating inclusion of private line services within the scope of this proceeding. Finally, C&W argues that the only plausible reason to apply the *International Resale Order* to the resale of international private lines to provide private line services would be purely for trade concerns, and there exists no legal authority for the Commission to promulgate trade policy.

2. Comments.

6. Televerket, the Swedish Telecom Group, supports C&W's petition, arguing that the policy rationale underlying the adoption of the equivalency requirement in the *International Resale Order* is not applicable to the resale of international private lines for the provision of private line service as non-switched traffic is not subject to the international settlements process.[9]

3. Discussion.

7. We agree with C&W that the resale of international private lines for private line service does not directly implicate the settlements process to the extent such lines are used only to carry non-switched traffic that is not subject to the international settlements process. Therefore, we clarify that the *International Resale Order* did not intend to require applicants seeking authority to resell international private lines for the common carrier provision of private line service to demonstrate that the country at the other end of the private line affords equivalent opportunities for the resale of international private lines.

8. The *International Resale Order* also confirmed the right of an end user to interconnect its international private line to the PSN through, for example, its own PBX.[10] We wish to make clear, however, that if the end user at any time uses an international private line interconnected to the PSN to provide a switched service to a third party on a common carrier basis, such use would constitute international resale whether the end user leased the line from a facilities-based common carrier or from someone reselling the facilities-based common carrier's international private line. In such a case, the end user would be considered a resale carrier subject to the *International Resale Order*, including the equivalency requirement for the resale of international private lines to provide switched services, and would itself be required to obtain certification under Section 214 of the Act.

B. AT&T's Petition for Reconsideration 1.

Petition.

9. AT&T requests the Commission to extend its international resale policy, including an equivalency requirement, to all arrangements for the interconnection of international private lines to the U.S. PSN at a carrier's central office, whether such connection is made for the benefit of the U.S. carrier or for its customers, whether resale carriers or end users.[11] In addition, AT&T urges the Commission to

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not address the resale of international private lines for the provision of enhanced services.

[7] We established a rule, 47 C.F.R. §63.01(k)(5), to reflect this requirement. *See International Resale Order*, Appendix B. We also required that every carrier obtain a separate Section 214 authorization for the resale of international private lines, even if the carrier has been previously authorized to serve the subject country through the resale of switched services or facilities-based service. *See International Resale Order* at 562. We note that on February 20, 1992 the British Embassy filed a pleading which it characterizes as a petition for reconsideration proposing that the Commission adopt a "time limited approach" for Section 214 applications requiring demonstration that equivalent resale opportunities exist. The British Embassy also expresses concerns that the Commission's individual analysis of Section 214 applications creates an open-endedness which allows opponents to submit objections solely for the purpose of delaying competitive market entry. We accept the British Embassy's pleading as informal comments rather than as a petition for reconsideration given that its pleading fell outside of the statutory deadline for filing reconsideration petitions. *See* 47 U.S.C. §405. We note that AT&T and Televerket filed responsive pleadings.

[8] *See* 47 C.F.R. §43.51(a)(3).

[9] WilTel Business Networks also supported C&W's petition in an *ex parte* meeting on July 23, 1992.

[10] Any such interconnections are subject to "special access" charges which the end-user must pay to compensate for the use of the PSN.

[11] To supplement its petition, AT&T requests that the Commission accept, as Supplemental Comments, its letter filed July 14, 1992, referencing a complaint (IC-92-05769) filed by the Philippines Long Distance Telephone against World Communications, Inc. (WorldCom) for allegedly engaging in un-

adopt the ISP filing and notification process,[12] or at a minimum a notification requirement, for all such interconnections, including all existing international private line arrangements connected to the U.S. PSN. Finally, AT&T requests the Commission to clarify that separate satellite systems and private cable providers (e.g. PanAmSat as a separate system licensee) are subject to the same requirements as U.S. common carriers in their provision of international private lines connected to the U.S. PSN.

2. Comments.

10. Sprint Communications Company L.P. (Sprint), American Petroleum Institute (API), Coalition of International Telecommunications Users (CITU), Information Technology Association of America (ITAA) and Televerket oppose AT&T's request that the Commission extend the application of the equivalency requirement embodied in Section 63.01(k)(5) to encompass end user interconnections to the PSN at a carrier's central office.[13] These commenters argue that application of the equivalency requirement to end-user interconnections of international private lines to the U.S. PSN would adversely impact end users by either precluding the option of private lines, thus impeding their ability to conduct business on an international basis, or by causing significant delays in obtaining private line services. Moreover, the use of international private lines by end users, argue the commenters, raises very different public policy considerations than use by carriers. In addition, ITAA specifically asserts that such an extension of the equivalency requirement would be inconsistent with CCITT's recently adopted Recommendation D.1.[14] and would have negative implications for the U.S. government's efforts to achieve increased telecommunications liberalization around the world.

11. The commenters also oppose AT&T's proposal to adopt an ISP filing and notification process as the procedural means by which a U.S. carrier could demonstrate AT&T's proposed equivalency requirement for end user interconnections of international private lines at the carrier's central office. They argue that such filing requirements would be needlessly intrusive into the end-user's business affairs, possibly resulting in the disclosure of customer sensitive and proprietary information, including customer identity and location. Various commenters suggest that the filing requirement could even inhibit the use of international telecommunications services and facilities by subjecting the interconnection arrangements to notification and public commentary. Finally, any notification requirement for central office interconnections, argue some commenters, would impose unnecessary burdens on end users, causing delays in the provision of private lines due to objections interposed by the provisioning carrier's competitors.

12. Pan American Satellite (PAS) and API oppose AT&T's request that the Commission clarify that the separate satellite systems and private cable providers are subject to the same requirements as U.S. common carriers in their provision of international private lines connected to the U.S. PSN. PAS argues that this proceeding focuses exclusively on common carriers and issues affecting those carriers subject to the international settlements process; moreover, PAS argues that a change in the Commission's rules based on a footnote in AT&T's petition would constitute inadequate notice and a violation of the Administrative Procedure Act (APA), *see* 5 U.S.C. §553. PAS thus suggests, and Televerket agrees, that AT&T should raise its concerns regarding separate satellite systems and private cables in a separate petition for rulemaking to afford all interested parties an opportunity to address the issues. API also contends that AT&T's petition is overreaching and conflicts with the Commission's recent Separate Systems decision,[15] which expressly contemplates accessing the PSN by international private lines.

3. Discussion.

13. The first issue raised by AT&T's petition is whether we should extend the scope of the equivalency requirement for the resale of international private lines to apply not only to resale carriers, but also to any interconnections made for end users at a U.S. carrier's central office.

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authorized international private line resale. WorldCom filed a Motion to Strike arguing that AT&T's filing violated Commission Rules and concerned a matter distinct from AT&T's petition. AT&T filed an Opposition to the Motion to which WorldCom replied. We grant AT&T's request as we find that the public interest would be served by a full and complete record in this proceeding.

[12] The ISP filing and notification process is the procedure by which a U.S. carrier can change either its accounting rate or certain aspects of its operating agreement. The procedure requires the U.S. carrier to submit either a waiver, subject to a 21 day review period, for a complex change in an accounting rate or a notification for a simple reduction in the accounting rate. Under the ISP, the U.S. carrier is required to serve either submission on all other U.S. carriers providing service to the subject foreign country in order to provide adequate notice of the proposed change. Extension of the ISP process and notification to all interconnections at a U.S. carrier's central office would require service of the notifications on other U.S. carriers serving the subject foreign country. For interconnections for a resale carrier, AT&T states that the ISP notification would follow the resale carrier having demonstrated that equivalent resale opportunities exist in the subject foreign country and having received its requested Section 214 authorization. For end user interconnections, however, AT&T suggests that the Commission adopt the ISP waiver procedure to serve as the means by which the U.S. carrier would demonstrate, prior to implementation of the arrangement, that equivalent resale opportunities exist for customers to interconnect at the foreign end.

[13] In the initial oppositions, some commenters seem to view AT&T's proposal as extending to all end user interconnections, regardless of whether they are on an end user's or carrier's premise; AT&T subsequently clarified that it intends only those interconnections taking place at a carrier's central office. *See* AT&T Reply to Oppositions at 3.

[14] *See* International Telecommunications Union (ITU), International Telephone and Telegraph Consultative Committee (CCITT), Access to Public Networks, Revised CCITT Recommendation D.1, "General Principles for the Lease of International (Continental and Intercontinental) Private Telecommunications Circuits and Networks", Geneva (May, 1991). Recommendation D.1 sets forth general principles and conditions applicable to international private leased telecommunications circuits and networks, subject to national laws. Our use of the term international private lines is what the CCITT refers to as "international private leased circuits."

[15] *Permissible Satellite Services of U.S. licensed International Communications Satellite Systems Separate from the International Telecommunications Satellite Organization (INTELSAT), (Permissible Services)*, 7 FCC Rcd. 2313 (1992).

AT&T's petition specifically requests that all interconnections of international private lines at a U.S. carrier's central office, whether for a resale carrier or end user, be permitted only when equivalent interconnection opportunities exist in the reverse direction. For end user interconnections, AT&T proposes that the U.S. carrier making that connection at its central office demonstrate, through the ISP waiver and notification process, that equivalent opportunities exist for U.S.-based end users to interconnect their international private lines to the PSN in the country where the subject international private line originates.[16] Without requiring interconnection equivalency, argues AT&T, these end user interconnections may occur in one direction only, and thus have the same effect on the international settlements process as one-way resale.

14. In our *International Resale Order*, we reaffirmed our longstanding policy of allowing end users to interconnect private lines, including international private lines, to the PSN in the United States.[17] We did not make any distinction between end users' international private lines interconnected at the end users' premises and those interconnected at a U.S. carrier's central office. Our review of AT&T's petition and the responsive pleadings leads us to conclude that the record before us does not contain sufficient facts to demonstrate that end user interconnections at a carrier's premise are having a significant enough impact on the international settlements process to warrant regulatory treatment different from that applied to interconnections at an end user's premises.

15. We recognize, however, that where international end user private lines interconnect to the PSN at a U.S. carrier's central office, there is the potential to divert a significant amount of U.S.-destined switched traffic out of the settlements process. We therefore adopt a Further Notice of Proposed Rulemaking and ask for comment on whether end user interconnections at a U.S. carrier's central office are undermining our international settlements policies to such an extent that an equivalency requirement should be applied to such interconnections. Specifically, we ask parties to comment on whether we should require a U.S. carrier that seeks to interconnect an end user private line from a particular foreign country to the PSN at the U.S. carrier's central office to show that equivalent opportunities to interconnect to the PSN at the foreign carrier's central office are available for end user private lines from the United States.[18] We also request comment on whether AT&T's proposed ISP filing and notification process[19] would be the most appropriate means of implementing such an equivalency requirement, or whether alternative approaches would be more desirable.

16. The next issue raised by AT&T addresses the extent to which interconnections of international private lines to the PSN must be notified under Section 43.51(a)(3).[20] We agree with AT&T that interconnections of international private lines to the PSN that occur at a U.S. carrier's central office raise greater concerns of evasion of our *International Resale Order* than those that occur at the end user's premises. Because of our heightened concern that such interconnections are more likely to be used for unauthorized resale activities, we believe that interconnections at a carrier's central office require greater scrutiny than interconnections on the end user's premises. We, therefore, agree with AT&T that there is a need for a mechanism which will allow us, and other interested persons, to monitor our international resale policy effectively.[21] In fact, the amendments we adopted to Section 43.51(a)(3) in our *International Resale Order* were intended to provide just such a mechanism.[22] We accordingly grant AT&T's request to clarify that whenever a U.S. carrier enters into an agreement with another carrier to interconnect an international private line to the U.S. PSN at its central office, whether for the benefit of a resale carrier or an end user, it must notify the Commission in accordance with Section 43.51(a)(3).[23] We reiterate that any such interconnection arrangements made after the effective date of the *International Resale Order* are required to be filed with the Commission within 30 days of their execution.

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[16] AT&T Petition at 1.

[17] *See International Resale Order* at 560.

[18] We also ask Parties which oppose adoption of an equivalency requirement for end users' international private lines to comment as to whether Section 43.51(a)(3)'s notification requirement for international private line interconnection arrangements should be modified to apply to any such arrangements entered into by a U.S. carrier and an end user (as opposed only to such arrangements between carriers, as described in paragraph 16, *infra*.)

[19] AT&T requests amendment of Section 43.51 of our rules, 47 C.F.R. § 43.51 (1991), to require a U.S. carrier that has interconnected, or proposes to interconnect, an international private line to the PSN at its central office to file a request under Section 64.1001 of our rules, 47 C.F.R. § 64.1001, for waiver of the ISP, and to provide a 21-day opportunity for comment. Section 64.1001 requires the carrier to serve a copy of the request on all carriers that provide the same or similar service to the country identified in the filing. Under AT&T's proposed approach, the interconnection could occur on the twenty-second day after the ISP filing, provided no one has filed objections and the Commission staff has not notified the carrier that grant of the waiver may not serve the public interest. Although carriers would be required to notify existing interconnections at their central office, the interconnections would remain in place during the ISP review.

[20] In relevant part, Section 43.51(a)(3) provides:

> (a) Any communications carrier engaged in domestic or foreign communications or both ... which enters into a contract with another carrier, must file with the Commission within 30 days of execution, a copy of each contract, agreement ... or other arrangement to which it is a party ... with respect to the following: (3) the interconnection of a private line to the United States' public switched network when such private line is used for foreign communications.

[21] We also clarify that "resale" by an end user may occur regardless of whether the interconnection is at an end user's premise or a carrier's premise. Should the end user engage in a resale activity using its own customer premises equipment, it is subject to the appropriate regulatory requirements set forth in the *International Resale Order*.

[22] While the amended Section 43.51(a)(3) intended to require U.S. carriers to notify us of every interconnection they make on their own premises, it appears from the pleadings before us that there is some doubt as to the extent of this requirement.

[23] We note that a U.S. carrier's notification of end user interconnections should contain a copy of the actual agreement, indicating the carrier correspondent on the foreign end of the international private line, but not necessarily the identity of the end user. Thus, we do not believe this requirement would be intrusive into the end user's business affairs.

17. Another issue raised by AT&T is whether we will place Section 043.51(a)(3) notifications on public notice for comment. We do not require any other filings made under our reporting rules, such as Section 63.10 additional circuit reports, to be put on public notice, and we see nothing in the record here to justify departure from our regular procedures of making such filings readily available to the public for review. Moreover, we believe that a public notice and comment period would cause undue delays in the implementation of international private line service for end users. We thus deny AT&T's request that such notifications of interconnection arrangements be subject to a public notice and comment period. Nonetheless, we recognize that an important part of our enforcement efforts is to make it easy for interested persons to review and comment on the Section 43.51(a)(3) filings. Therefore, Section 43.51(a)(3) filings shall be available for public inspection in the Common Carrier Bureau. We believe that these notifications further increase our ability to detect any violations of our international resale policy as well as to monitor end user interconnections. We reiterate that we have ample authority to take corrective actions for any such violations.

18. The final issue concerns AT&T's request that the Commission clarify that separate satellite and private cable providers are subject to the same requirements as U.S. common carriers in their provision of international private lines interconnected to the U.S. PSN.[24] Our *International Resale Order*, as well as the Phase II Further Notice, addresses the resale of international common carrier private line services, and, as such, does not apply to the sale or lease of facilities acquired directly from a non-common carrier cable or separate satellite system. Therefore, we deny AT&T's request as it is outside of the scope of this proceeding. We note, as does PAS, that this issue has been raised in a separate proceeding, and is appropriately addressed in that context.[25]

19. As a matter of policy, separate satellite and private cable providers are not common carriers and do not offer international common carrier private line services. However, common carriers, upon appropriate authorization under Section 214, may acquire capacity from separate satellite or private cable providers for use in offering their own common carrier services, such as international private line service. We regulate a common carrier acquiring such capacity as a facilities-based carrier, just as we regulate a common carrier acquiring INTELSAT space segment from COMSAT as a facilities-based carrier,[26] and therefore do not require either to show equivalency under our *International Resale Order*. However, whenever a U.S. common carrier intends to resell international common carrier private lines for switched services, whether the common carrier private lines being resold are provided over a common carrier, separate satellite or private cable facility, the resale carrier's Section 214 application is subject to the equivalency requirement of our *International Resale Order*.[27]

IV. CONCLUSION

20. This Order addresses two petitions for reconsideration of various aspects of our *International Resale Order*. We grant C&W's request to clarify that the *International Resale Order* 's equivalency requirement does not apply to the resale of international private lines for private line services. We ask for further comment on AT&T's request to extend an equivalency requirement to end user international private line interconnections at a U.S. carrier's central office and to adopt an ISP filing and notification requirement as the implementing mechanism. We grant AT&T's request to clarify that all arrangements entered by a U.S. carrier with another carrier for interconnections at a carrier's central office, whether for a resale carrier or an end user, must be notified to the Commission pursuant to Section 43.51(a) (3) of our Rules. We also ask for further comment on amending Section 43.51(a) (3) to require notification of all such interconnection arrangements, including those between a U.S. carrier and an end user. Finally, we deny AT&T's request that we clarify that separate satellites and private cables are subject to the same regulatory requirements, under the *International Resale Order*, as U.S. common carriers in their provision of interconnected international private lines as it is outside the scope of this proceeding.

V. ORDERING CLAUSE

21. Accordingly, IT IS HEREBY ORDERED that the petition for reconsideration or clarification filed by C&W is GRANTED and that the petition for reconsideration filed by AT&T is DENIED IN PART and GRANTED IN PART, as discussed above.

22. IT IS FURTHER ORDERED that the Third Further Notice of Proposed Rulemaking is adopted.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

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[24] AT&T Petition at 1, n.*.

[25] *See* File No. CSS-84-004-P-(M).

[26] In *Establishment of Satellite Systems Providing International Communications*, 100 F.C.C. 2d 1046, 1108 (1985) (*Separate Satellite Systems*) , we allowed common carriers to acquire separate satellite capacity for their provision of common carrier services, subject to the requirement that the common carriers obtain Section 214 authorization and that they not interconnect such facilities to the PSN. Similarly, in *Tel Optik Limited*, 100 F.C.C. 2d 1033 (1985), we authorized common carriers to obtain private cable capacity for the provision of their common carrier services. In *Permissible Services*, we relaxed the restriction against interconnection of such facilities.

[27] We note that neither the Phase II Further Notice nor the *International Resale Order* limited the scope of their application to the resale of international private lines provided by a common carrier over a common carrier facility.

APPENDIX A
Procedural Matters

I. Ex Parte Rules - Non-Restricted Proceeding

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

II. Initial Regulatory Flexibility Act

A. Reason for Action

This rulemaking proceeding is initiated to obtain comment regarding the proposed extension of the Commission's equivalency requirement to the interconnection of a U.S. carrier's international private lines to the U.S. public switched network at the U.S. carrier's central office, if such end user interconnections are substantially undermining the Commission's international settlements policies.

B. Objectives

The Commission seeks to determine whether end user international private line interconnections at U.S. carriers' central offices are substantially undermining the Commission's international settlements policies, and if the Commission's equivalency requirement should be extended to such end user interconnections.

C. Legal Basis

The proposed action is authorized under Sections 1, 4, 201-205, 211, 214, 215, 218-220, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 211, 214, 215, 218-220, and 303. H

D. Reporting, Recordkeeping and Other Compliance Requirements

None.

E. Federal Rules That Overlap, Duplicate or Conflict With These Rules

None.

F. Description, Potential Impact, and Number of Small Entities Involved

The proposals discussed in this *Third Further Notice of Proposed Rulemaking* may increase regulatory requirements on international facilities-based common carriers that enter into agreements to interconnect international private lines to the U.S. public switched network at their central offices.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

None.

III. Paperwork Reduction Act Statement

The proposals suggestions will not create any undue burden on the public.

IV. Comment Dates

Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before *February 12, 1993*, and reply comments on or before *March 12, 1993*. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to: Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Federal Communications Commission Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: November 27, 1992

COMMENTS INVITED ON IOWA PUBLIC SAFETY PLAN

The Commission has received the public safety radio communications plan for Iowa (Region 15).

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87-112, Region 15 consists of the state of Iowa. (General Docket No. 87-112, 3 FCC Rcd 2113 (1988)).

In accordance with the Commission's Report and Order in General Docket No. 87-112 implementing the Public Safety National Plan, interested parties may file comments on or before **January 6, 1993** and reply comments on or before **January 21, 1993.** (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, D.C. 20554 and should clearly identify them as submissions to **PR Docket 92-288 Iowa-Public Safety Region 15.**

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497 or Ray LaForge, Office of Engineering and Technology, (202) 653-8112.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: November 27, 1992

COMMENTS INVITED ON BUFFALO AREA PUBLIC SAFETY PLAN

The Commission has received the public safety radio communications plan for the Buffalo area (Region 55).

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87-112, Region 55 consists of the following counties: Niagara, Chemung, Schuyler, Seneca, Erie, Chautauqua, Cattaraugus, Allegany, Wyoming, Genesee, Orleans, Monroe, Livingston, Steuben, Ontario, Wayne and Yates. (General Docket No. 87-112, 3 FCC Rcd 2113 (1988)).

In accordance with the Commission's Report and Order in General Docket No. 87-112 implementing the Public Safety National Plan, interested parties may file comments on or before **January 6, 1993** and reply comments on or before **January 21, 1993.** (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, D.C. 20554 and should clearly identify them as submissions to **PR Docket 92-287 Buffalo Area-Public Safety Region 55.**

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497 or Ray LaForge, Office of Engineering and Technology, (202) 653-8112.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: November 27, 1992

COMMENTS INVITED ON EL PASO AREA PUBLIC SAFETY PLAN

The Commission has received the public safety radio communications plan for the El Paso area (Region 50).

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87-112, Region 50 consists of the following counties: Knox, Kent, Stonewall, Haskell, Throckmorton, Gaines, Dawson, Borden, Scurry, Fisher, Jones, Shackelford, Stephens, Andrews, Martin, Howard, Mitchell, Nolan, Taylor, Callahan, Eastland, Loving, Winkler, Ector, Midland, Glasscock, Sterling, Coke, Runnels, Coleman, Brown, Comanche, Culberson, Reeves, Ward, Crane, Upton, Reagan, Irion, Tom Green, Concho, McCulloch, Jeff Davis, Hudspeth, El Paso, Pecos, Crockett, Schleicher, Menard, Mason, Presidio, Brewster, Terrell, Sutton and Kimble. (General Docket No. 87-112, 3 FCC Rcd 2113 (1988)).

In accordance with the Commission's Report and Order in General Docket No. 87-112 implementing the Public Safety National Plan, interested parties may file comments on or before **January 6, 1993** and reply comments on or before **January 21, 1993.** (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, D.C. 20554 and should clearly identify them as submissions to **PR Docket 92-286 El Paso Area-Public Safety Region 50.**

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497 or Ray LaForge, Office of Engineering and Technology, (202) 653-8112.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Expanded Interconnection with Local Telephone Company Facilities	**CC Docket No. 91-141 Transport Phases I & II**
Transport Rate Structure and Pricing	**CC Docket No. 91-213**
Amendment of the Part 69 Allocation of General Support Facility Costs	**CC Docket No. 92-222**
Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board	**CC Docket No. 80-286**

ORDER

Adopted: November 24, 1992; Released: November 25, 1992

Allocation of General Support Facility Costs (CC Docket No. 92-222)

Comment Date: December 4, 1992

Reply Date: December 21, 1992

(no change)

Expanded Interconnection - Separations (CC Docket Nos. 91-141 and 80-286)

Joint Board Comment Date: December 21, 1992

Joint Board Reply Date: January 22, 1993

(no change)

Expanded Interconnection - Transport - Phase I (CC Docket No. 91-141)

Comment Date: January 14, 1993

Reply Date: February 19, 1993

Transport Rate Structure and Pricing (CC Docket No. 91-213)

Comment Date: February 1, 1993

Reply Date: March 9, 1993

Expanded Interconnection - Transport - Phase II (CC Docket No. 91-141)

Comment Date: March 3, 1993

Reply Date: April 2, 1993

By the Chief, Policy and Program Planning Division, Common Carrier Bureau:

1. The United States Telephone Association, Inc. (USTA) has requested that the pleading cycles in the above-captioned proceedings be restructured.[1] USTA proposes no changes in the comment dates in the proceeding on the allocation of general support facility (GSF) costs[2] and the Joint Board proceeding on the separation of expanded interconnection costs.[3] USTA proposes extending the comment dates in the *Transport Rate Structure and Pricing* proceeding[4] and in Phases I and II of the *Expanded Interconnection* proceeding.[5] Under USTA's proposal, comments in Phase I of the *Expanded Interconnection* proceeding would be due on January 8, 1993, and replies would be due on February 9, 1993; and comments in Phase II of the *Expanded Interconnection* proceeding would be due on February 24, 1993, and replies would be due on March 26, 1993. Comments in the *Transport* proceeding would be due on March 30, 1993, and replies would be due on May 7, 1993, more than six months after release of the recent order.

2. In support of its request, USTA states that the schedules in these proceedings require a large number of filings, including comments, tariff filings, and petitions for reconsideration, within a short time frame. Given the novelty of the issues and the complexity of the required tasks, USTA argues that a restructured pleading cycle would promote more efficient use of resources by the Commission and the parties, and would not affect the pace of policy implementation. Several parties, including LECs, competitive access providers, and interexchange carriers, filed comments generally supporting USTA's proposal.[6]

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[1] Motion to Restructure Pleading Cycles by the United States Telephone Association (Nov. 10, 1992).

[2] *Expanded Interconnection with Local Telephone Company Facilities* and *Amendment of the Part 69 Allocation of General Support Facility Costs*, Report and Order and Notice of Proposed Rulemaking, CC Docket Nos. 91-141 and 92-222, FCC 92-440 (released Oct. 19, 1992) (*Expanded Interconnection Order*), ¶¶ 267-69. The comment date on the allocation of GSF is December 4, 1992 and the reply comment date is December 21, 1992.

[3] *Expanded Interconnection with Local Telephone Company Facilities* and *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 91-141 and 80-286, FCC 92-441 (released Oct. 16, 1992) (*Expanded Interconnection Notice*), ¶¶ 54-55. The comment date on separation of expanded interconnection costs is December 18, 1992, and the reply comment date is January 22, 1993.

[4] *Transport Rate Structure and Pricing*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 91-213, FCC 92-442 (released Oct. 16, 1992) (*Transport Order and Notice*). Comments are due on December 18, 1992, and replies are due on January 21, 1993.

[5] *Expanded Interconnection Notice*, ¶¶ 1-53. Comments on Phase I are due on December 4, 1992 and replies are due on December 21, 1992. Comments on Phase II are due on December 21, 1992, and replies are due on January 22, 1993.

[6] MCI Telecommunications Corp. Comments (Nov. 24, 1992); MFS Communications Co., Inc. Comments (Nov. 24, 1992); *Ex*

3. While we do not routinely grant extensions of time,[7] we believe that USTA has shown good cause for a limited extension of time. There are an extraordinary number of filings due during December and January in these proceedings, as well as possible petitions for reconsideration and activities related to the tariff revisions reflecting the policies we have adopted concerning expanded interconnection and transport. We believe, however, that USTA's proposed comment and reply dates for the *Transport* proceeding would result in undue delay. Instead, we restructure the pleading cycle in a manner that ensures that both the *Expanded Interconnection* and *Transport* proceedings move forward in a timely manner.

4. We therefore adopt the following schedule:

December 4, 1992: Comments on Allocation of GSF Costs (CC Docket No. 92-222) (no change)

December 21, 1992: Reply comments on Allocation of GSF Costs (CC Docket No. 92-222) (no change) Comments to Joint Board on Separation of Expanded Interconnection Costs (CC Docket Nos. 91-141 and 80-286) (no change)

January 14, 1993: Comments on Expanded Interconnection for Switched Transport (Phase I) (CC Docket No. 91-141)

January 22, 1993: Reply comments to Joint Board on Separation of Expanded Interconnection Costs (CC Docket Nos. 91-141 and 80-286) (no change)

February 1, 1993: Comments on Transport Rate Structure and Pricing (CC Docket No. 91-213)

February 19, 1993: Reply comments on Expanded Interconnection for Switched Transport (Phase I) (CC Docket No. 91-141)

March 3, 1993: Comments on Expanded Interconnection -- Competitive Switched Access Networks (Phase II) (CC Docket No. 91-141)

March 9, 1993: Reply comments on Transport Rate Structure and Pricing (CC Docket No. 91-213)

April 2, 1993: Reply comments on Expanded Interconnection -- Competitive Switched Access Networks (Phase II) (CC Docket No. 91-141)

5. Accordingly, IT IS ORDERED that the USTA Motion to Restructure Pleading Cycles IS GRANTED to the extent provided herein, and otherwise IS DENIED.[8]

FEDERAL COMMUNICATIONS COMMISSION

James D. Schlichting, Chief
Policy and Program Planning Division
Common Carrier Bureau

Parte Letter from Lisa M. Zaina, General Counsel, Organization for the Protection and Advancement of Small Telephone Companies, to James D. Schlichting, Chief, Policy and Program Planning Commission (Nov. 20, 1992); Rochester Comments (Nov. 16, 1992); Sprint Communications Co. Comments (Nov. 20, 1992) (generally supporting USTA proposal but suggesting modifications to schedule that would slightly advance date of *Transport* comments and slightly postpone date of *Transport* replies); WilTel, Inc. Comments (Nov. 16, 1992).

[7] 47 C.F.R. § 1.46(a).

[8] This action is taken pursuant to Sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j) and 155(c), and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NYNEX Telephone Companies

Revisions to Tariff F.C.C. No. 1 — Transmittal No. 116

MEMORANDUM OPINION AND ORDER

Adopted: November 25, 1992; Released: November 30, 1992

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On September 2, 1992, the NYNEX Telephone Companies (NYNEX) filed Transmittal No. 116 to restructure application of the End User Common Line (EUCL) Multiline Business Subscriber rate for certain local exchange services. For reasons discussed more fully below, we reject Transmittal 116 because it violates Section 69.104 of the Commission's Rules, 47 C.F.R. § 69.104.

II. BACKGROUND

2. NYNEX currently assesses one multiline business EUCL charge, more commonly known as a Subscriber Line Charge (SLC), for each channel used for local exchange service that is derived from a T1 facility,[9] whether a single T1 is used to provide one customer with the same service on all channels, one customer with different services on the channels, or multiple customers with one or more services on their share of the T1 facility's channels.[10] Transmittal 116 would change the way NYNEX counts lines for purposes of charging its multiline business SLC for certain local exchange services. Specifically, under Transmittal 116, NYNEX would assess only one SLC per T1 facility so long as all the channels derived from that facility are used to provide one customer with either FLEXPATH Digital PBX Service (FLEXPATH Service), Analog to Digital Conversion PBX Service (Conversion PBX Service), or ISDN Primary Service (ISDN Service).[11] In all other instances, NYNEX would continue to assess one SLC per derived channel.[12] NYNEX states that as a result of this proposed change in the application of SLCs, its Multiline Business SLC and carrier common line (CCL) rates will increase slightly and revenues will decrease slightly.[13]

3. NYNEX asserts that "where derived channels are used to provide a single T1-based service to a single customer, the Commission's Rules permit the application of one SLC per service/facility."[14] NYNEX also argues that charging only one SLC per T1 facility used to provide a single service to a single customer is justified because "the costs of providing single facility derived channel services are generally lower than if multiple facilities are used ...." Otherwise, NYNEX argues, "these customers would pay a disproportionate share of common line costs."[15] No petitions were filed against this tariff.

III. DISCUSSION

4. We reject NYNEX's position that assessing one SLC per T1 facility used to provide one customer with a single local exchange service is permissible under Part 69 of the Commission's Rules. Section 69.104 of the Commission's Rules, 47 C.F.R. § 69.104, requires that a SLC be assessed on an end user for each subscriber line used for local exchange service. Section 69.104(a) states:

> A charge that is expressed in dollars and cents *per line* per month shall be assessed upon end users that subscribe to local exchange telephone service, Centrex or semi-public coin telephone service to the extent they do not pay carrier common line charges. *Such charge shall be assessed for each line* between the premises of an end user and a Class 5 office that is or may be *used for local exchange service transmissions.* (Emphasis added.)

5. In Part 36 of the Commission's Rules, a "subscriber line" is defined as a "communication *channel* between a telephone station, PBX or TWX station and the central office which serves it"[16] (emphasis added). A "channel" is defined as an "electrical path suitable for the transmission of communications between two or more points."[17] A

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[9] Each T1 facility consists of a single transmission medium (*e.g.*, twisted copper pair) from which the equivalent of up to 24 voice-grade channels can be derived through the use of multiplexing equipment. NYNEX Description and Justification (D&J) at 1 n.2.

[10] *Id.* at 1, 2.

[11] *Id.* at 1. FLEXPATH Service allows a customer to directly integrate up to 24 trunk channels over a single 1.544 mbps facility between a suitably equipped central office and a digital PBX. Conversion PBX Service provides digital trunking capability via a 1.544 mbps facility between a customer's digital PBX and an analog to digital interface device located at a central office switch. A maximum of 24 trunk access lines can be integrated into each 1.544 mbps facility. ISDN Service provides a direct digital connection, via switched access, to one or more public and/or private services. The service is used to connect ISDN compatible subscriber-provided premises equipment to a suitably equipped telephone company node. Twenty-four channels will be available at the ISDN port termination at the central office switch. The subscriber may choose to activate a subset or all of the channels at the port termination. *Id.* at 3.

[12] *Id.* at 1, 4.

[13] *Id.* at 2.

[14] *Id.* at 4. In essence, NYNEX is arguing that since a T1 facility consists of a single transmission medium (*e.g.*, a twisted copper pair), provision of a T1 facility to a single customer for a single service is equivalent to provision of a single voice-grade line to, for example, a residential customer, and thus should be assessed only one SLC. In other words, to NYNEX, a line is a line, regardless of the number of channels that are derived therefrom, so long as the T1 is used to provide the same service on all channels to one customer.

[15] *Id.*

[16] 47 C.F.R. Part 36, Appendix-Glossary.

[17] *Id.*

channel derived from a T1 facility is an "electrical path suitable for the transmission of communications." Thus, when a LEC provides local exchange service to one customer over a single T1 facility, the LEC is providing the equivalent of up to 24 voice-grade channels or subscriber lines to that customer. Although these channels are provided to one customer over a single, physical line (*e.g.*, a twisted copper pair), the fact remains that the LEC is providing not one, but up to 24, electrical paths suitable for the transmission of communications. Thus, a more reasonable reading of the rule than that advanced by NYNEX is that one SLC must be assessed for each T1-derived channel provided by a LEC for local exchange service.

6. NYNEX itself interpreted the requirement in this manner until the filing of the instant tariff. Further, NYNEX continues to interpret the Commission's Rule in this manner where a single T1 facility is used to provide one customer with more than one service. For example, a customer who orders one T1 facility and uses 13 derived channels for special access services, and the remaining 11 derived channels for switched local exchange services, would pay 11 SLCs. Charging SLCs on a per T1 facility basis when all channels of a T1 are used to provide one switched local exchange service to one customer, but on a per channel basis when the channels are used to provide more than one service to one customer, is inconsistent with the position that a T1 provided to one customer is a single physical line and thus should be charged one SLC.

7. We also find to be without merit NYNEX's argument that charging only one SLC per T1 facility used to provide a single local exchange service to a single customer is proper because it costs less than if those channels are provided over multiple facilities (*i.e.*, one T1 line costs less than 24 voice-grade lines). While NYNEX's argument might be reason to consider changing Section 69.104 -- an action which is beyond the scope of this tariff proceeding -- it fails to address the decisive factor under this rule for deciding when a SLC is to be assessed. Pursuant to Section 69.104(a), the number of SLCs to be assessed depends solely on the number of lines to which an end user subscribes for local exchange service. Thus, the cost of those lines is not relevant to the number of SLCs to assess.

8. The Bureau finds, for the above reasons, that Transmittal 116 violates Section 69.104 of the Commission's Rules. It is therefore patently unlawful and is rejected.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Section 202(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 202(a), the tariff revisions filed by the NYNEX Telephone Companies in Tariff F.C.C. No. 1, Transmittal No. 116, ARE REJECTED.

10. IT IS FURTHER ORDERED that the NYNEX Telephone Companies SHALL FILE tariff revisions removing the rejected material and reinstating currently effective material no later than five business days from the release of this Order to be effective on one day's notice. Special Permission No. 92-876 is assigned for this purpose and Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58 and 61.59, are waived.

FEDERAL COMMUNICATIONS COMMISSION

Cheryl A. Tritt
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 91-226

In the Matter of

NYNEX Telephone Companies — Transmittal Nos. 3, 39, and 108

Revisions to Tariff
F.C.C. No. 1

MEMORANDUM OPINION AND ORDER

Adopted: November 23, 1992; Released: December 7, 1992

By the Commission:

I. INTRODUCTION

1. This investigation of the rates for special access fiber based channel terminations (FBCT) charged by the NYNEX Telephone Companies (NYNEX) began on August 2, 1991.[1] Based on the clarification of the test for pricing new services that the Commission recently explained in the *LEC Price Cap Reconsideration Order*,[2] we find that those rates are not unreasonable and are therefore lawful.

II. BACKGROUND

2. Transmittal No. 3, the original transmittal at issue in this investigation, was protested by MCI Telecommunications Corporation (MCI) and Metropolitan Fiber Systems, Inc. (MFS).[3] MCI argued that the carriers' rates for FBCT service, which is a new service, are significantly above costs. MFS claimed that the new service did not meet the net revenue test because the transmittal lacked documentation.[4] The Common Carrier Bureau concluded, based on its review of Transmittal Nos. 3 and 39, the associated pleadings, and all cost support submitted, that the NYNEX transmittals may contain unreasonably high rates in violation of Section 201(b) of the Communications Act, 47 U.S.C. § 201(b). The Bureau further concluded that because customers may be subject to excessive rates as a result of this new service, it would suspend the offering for one day, impose an accounting order, and initiate an investigation of the reasonableness of those rates.[5]

3. The *NYNEX Investigation Order* also designated issues for investigation to aid the Commission in determining whether NYNEX's rates are just and reasonable. That Order asked the carrier to address whether the Commission should permit NYNEX to set its rates at a level that will generate net revenue, or whether NYNEX should be required to set its rates at a level reflecting fully distributed cost, if NYNEX's offering cannot meet both standards. In addition, the *NYNEX Investigation Order* directed NYNEX to explain the cross-elastic effects between the carrier's existing voice grade service and digital data service (DDS) II channel terminations, and FBCT.[6]

4. NYNEX filed its direct case on September 13, 1991. On October 11, 1991, MCI Telecommunications Corporation (MCI) filed an opposition to the direct case and Southwestern Bell Telephone Company (Southwestern) filed comments on the direct case. MCI contends that NYNEX should not be allowed to use the net revenue test to justify rates that are above fully distributed cost levels. MCI Opposition at 4-7. If the Commission allows NYNEX to use the net revenue test to justify its rates, MCI argues that NYNEX has used implausible assumptions concerning FBCT service to manipulate that test. MCI Opposition at 7-11. Southwestern filed comments in support of NYNEX's direct case. In particular, Southwestern argues that the Commission should affirm the net revenue test as the only proper standard for analyzing the rates of a new service. Southwestern Comments at 2-5. NYNEX filed a reply to MCI's opposition on October 25, 1991.[7]

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[1] NYNEX Telephone Companies, Revisions to Tariff F.C.C. No. 1, Transmittal Nos. 3 and 39, CC Docket No. 91-226, 6 FCC Rcd 4841 (Com.Car.Bur. 1991) (*NYNEX Investigation Order*).

[2] Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Policy and Rules Concerning Rates for Dominant Carriers, CC Docket Nos. 89-79 & 87-313, Memorandum Opinion & Order On Second Further Reconsideration, 7 FCC Rcd 5235 (Com.Car.Bur. 1992) (*LEC Price Cap Reconsideration Order*), *petitions for further recon. pending.*

[3] NYNEX filed Transmittal 39 to modify its original transmittal before the tariff became effective.

[4] *NYNEX Investigation Order*, 6 FCC Rcd at 4841.

[5] *NYNEX Investigation Order*, 6 FCC Rcd at 4841. On August 4, 1992, NYNEX filed Transmittal No. 108 to revise rates for its FBCT service. On September 14, 1992, the Bureau issued an Order suspending the tariff for one day, instituting an accounting order, and incorporating Transmittal 108 in the investigation instituted in CC Docket No. 91-226. NYNEX Telephone Companies, Revisions to Tariff F.C.C. No. 1, Transmittal No. 108, CC Docket No. 108, Order, DA 92-1239 (released September 14, 1992).

[6] *NYNEX Investigation Order*, 6 FCC Rcd at 4842. The Order also directed NYNEX to provide the following information in its direct case with respect to the cost of providing FBCT service: (1) Explain the direct costs for FBCT. Provide a 12-month showing of these direct costs and include all supporting workpapers. (2) Explain how the fixed cost loadings for this service were determined. Explain also the ratio of direct unit cost to unit investment and direct unit cost to unit price for FBCT and other NYNEX special and switched access services. (3) Provide a study showing the effect of FBCT on demand and revenues, including the demand and revenues of other services. Include supporting workpapers for estimates of demand and revenues. (4) In the event that NYNEX claims that the rate for FBCT should include a risk premium, the carrier's direct case should provide the information described in paragraph 43 of the *Part 69 ONA Order*. *NYNEX Investigation Order*, 6 FCC Rcd at 4842. (*See* note 8, *infra*, for citation to *Part 69 ONA Order*.)

[7] In its reply, NYNEX states that it responded only to MCI's opposition because Southwestern filed comments supportive of NYNEX's direct case. NYNEX Reply at n.1.

III. DISCUSSION

5. In the *Part 69 ONA Order*,[8] adopted prior to the Bureau's *NYNEX Investigation Order*, the Commission introduced a flexible cost-based approach to pricing new services that would control excessive or anticompetitive pricing, and would prevent discrimination. Local exchange carriers (LECs) subject to price caps were allowed to develop their own costing methodologies, constrained by the requirements that the new service would contribute to defraying the LEC's overheads,[9] and that ratemaking methodologies would be consistent for similar services. To achieve flexible pricing, a LEC was allowed to distribute overhead loading costs in a non-uniform manner among similar services if the LEC adequately justified those loadings.[10]

6. Subsequent to the Bureau's *NYNEX Investigation Order*, the Commission further clarified and modified the cost support required to tariff new services in the *LEC Price Cap Reconsideration Order*.[11] Recognizing that the *Part 69 ONA Order* already required carriers to show their direct costs, the Commission decided that LECs would no longer be required to satisfy the net revenue test to ensure that their rates were not predatory. In addition, that Order clarified that overhead loadings for a new service would be considered justifiable under the *Part 69 Order*, and thus the price of the new service presumptively reasonable, if the price of the new version of an existing service was below the price of the existing service.[12] This is the principle we now apply in evaluating the NYNEX FBCT offering.[13]

7. NYNEX anticipates that demand for FBCT service will come from its existing customer base because customers are migrating from point-to-point voice grade service and DDS to multiplexed high capacity services. NYNEX claims that existing customers will migrate to competitive access providers if NYNEX does not offer FBCT service.[14] MCI does not dispute the assumption that demand for FBCT will come from existing voice grade and digital data service customers.[15] Therefore, we conclude that FBCT service is a close substitute for existing voice grade and DDS channel termination services.

8. The *LEC Price Cap Reconsideration Order* expresses the Commission's commitment to encourage LEC innovation and the introduction of new services by allowing LECs to price a close substitute service or services anywhere above direct costs plus reasonable overheads but below the level of the existing service. Therefore, the relevant existing prices with which to compare FBCT service are the prices for similar voice grade and DDS channel termination services. NYNEX argues that the FBCT service rates represent 12 percent to 39 percent reductions in comparable existing tariffed rates. NYNEX compares voice grade FBCT and DDS FBCT at $66 and $85 respectively, with existing rates of $74.79 and $139.39. To arrive at its figures for comparable existing rates, NYNEX uses the weighted monthly tariffed rates for voice grade channel terminations ($50.21) and DDS channel terminations ($114.81), plus the per-circuit charge for central office multiplexing to deliver DS0 service to DS1 service at the customer's serving wire center (1/17 x $417.84).[16]

9. Based on the *LEC Price Cap Reconsideration Order*, we find that because FBCT service provides a close substitute for existing voice grade and digital data channel terminations, multiplexed to a DS1 service, the rates for this new service must be less than the equivalent services in order to be allowed to become effective. The record shows that the rates charged by NYNEX are less than the rates the carrier charges for multiplexed voice grade and DDS channel termination services, and that customers therefore are better off taking the FBCT service. We therefore conclude that the FBCT service rates of NYNEX are not unreasonable, and are thus lawful.[17] Accordingly, we terminate our investigation of those rates.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that the investigation in CC Docket No. 91-226 IS TERMINATED.

11. IT IS FURTHER ORDERED that the accounting order imposed in CC Docket No. 91-226 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna Searcy
Secretary

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[8] Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Policy and Rules Concerning Rates for Dominant Carriers, CC Docket Nos. 89-79 & 87-313, Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524 (1991) (*Part 69 ONA Order*).

[9] The net revenue test placed a lower bound on rates for new services to insure carriers did not engage in predatory pricing. The net revenue test required LECs to show that anticipated revenues were sufficient to cover direct costs and to produce some level of additional revenues within the first three years after introduction of the new service.

[10] *Part 69 ONA Order*, 6 FCC Rcd at 4531 (para. 44).

[11] *See* note 2, *supra*, for a complete citation.

[12] *LEC Price Cap Reconsideration Order*, 7 FCC Rcd at 5237 (para. 11). Because we rely on the clarification of the new services test, we dismiss MCI's argument that the carriers improperly applied the net revenue test.

[13] *See* Ameritech Operating Companies, Revisions to Tariff F.C.C. No. 2, Transmittal No. 518 and United Telephone System Companies, Revisions to Tariff F.C.C. No. 5, Transmittal No. 273, Memorandum Opinion and Order, CC Docket No. 91-215, FCC 92-436 (released Nov. 6, 1992).

[14] NYNEX Direct Case at Appendix A, p. 8.

[15] MCI, however, does dispute NYNEX's assumption that offering FBCT service will not stimulate new demand also. MCI Opposition at 8-9. *See also* Southwestern Comments at 6 (calling FBCT service "a new, substitute service").

[16] NYNEX Direct Case at Appendix A, p. 15. Under the FBCT service tariff, NYNEX delivers DS1 service at the customer's serving wire center.

[17] The direct case of NYNEX, and the comments on that direct case, principally discuss whether the carrier's FBCT service should satisfy the net revenue test or be based on fully distributed cost. As the net revenue test is no longer required for new services, we do not address any of the parties' arguments regarding it.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BUSINESS WATS, INC.,
Complainant,

v. File No. E-93-011

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY,
Defendant.

MEMORANDUM OPINION AND ORDER

Adopted: November 25, 1992; Released: December 7, 1992

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. In this order, we address a Petition for Emergency Relief (Petition) filed by Business WATS, Inc (BWI), a reseller of the Distributed Network Services (DNS) of American Telephone and Telegraph Company (AT&T). BWI seeks the issuance of a Commission order preventing AT&T from (1) requiring BWI to pay disputed non-DNS charges, (2) disconnecting DNS service to BWI, (3) restricting provisioning of new DNS or similarly tariffed service to BWI or BWI's customers, or (4) imposing security or advance payment requirements on BWI for all tariffed services, pending hearing of BWI's complaint. For reasons discussed below, we deny BWI's Petition.

2. In determining whether to grant the extraordinary remedy of a stay of its action or other extraordinary relief in the nature of a temporary restraining order or preliminary injunction, the Commission generally considers whether the petitioner has made a strong showing that it is likely to prevail on the merits on appeal, that irreparable injury would result absent a stay, a stay will not substantially harm other interested parties, and that a stay will be in the public interest.[1] BWI has not shown that it would be irreparably injured by paying the disputed amounts billed to it by AT&T or by meeting AT&T's security or advance payment requirements, and that it cannot be made whole should it ultimately prevail on the merits of its complaint.[2] The Commission previously has stated that a customer, even a competitor, is not entitled to the self-help measure of withholding payment for tariffed services duly performed but should first pay, under protest, the amount allegedly due and then seek redress if such amount was not proper under the carrier's applicable tariffed charges and regulations.[3]

3. The Commission generally is disinclined to intervene in matters involving a carrier's decision to terminate service of a particular customer that has failed to pay legally effective and overdue tariffed charges for tariffed service that the carrier has duly rendered. Nor is the Commission inclined to second guess a carrier's decision, with respect to a particular customer, to impose deposit, advance payment or other security arrangements provided for in its tariff. Such determinations properly are matters within the carrier's business judgment and, as such, ordinarily will be left undisturbed, absent a showing that the carrier acted unreasonably or unduly discriminated.[4]

4. Carriers have been cautioned that a decision to terminate a customer's service, or their refusal to accept or to provision a customer's additional orders for service, particularly when such customer, as here, is a competitor, has grave consequences and should not be taken lightly. Such action would be proper, and not anticompetitive, only if a carrier had "substantially performed" and "reasonably discharged all of its obligations" under its tariff, including, but not limited to, billing accurately and granting credits called for under all of the circumstances of a particular case.[5] Whether AT&T's conduct in this regard was, in fact, lawful is an issue to be determined, following further discovery, on the record in the above-captioned proceeding.

5. In view of the foregoing, we conclude that BWI has not met its burden for the extraordinary relief that it seeks.

6. Accordingly, IT IS ORDERED, pursuant to authority delegated under 47 C.F.R. § 0.291, that the Petition for Emergency Relief, filed by Business WATS, Inc. on November 5, 1992, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory A. Weiss
Deputy Chief (Operations)
Enforcement Division
Common Carrier Bureau

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[1] *See* Comark Cable Fund III v. Northwestern Indiana Telephone Co., 104 FCC 2d 451, 456 (1985), *citing* Virginia Petroleum Jobbers Assoc. v. FPC, 259 F.2d 921 (D.C. Cir. 1958); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977); Big Valley Cablevision, Inc., 85 FCC 2d 973, 978 (1981).

[2] BWI's showing of supposed irreparable harm consists mostly, if not entirely, of conclusionary allegations that it will be put out of business and forced to abandon the resale market if AT&T cuts off its service. (Petition at 10-15). In light of BWI's failure to show irreparable injury, we need not determine whether BWI met the other criteria of the four-prong test for a stay or injunctive relief.

[3] MCI Telecommunications Corp., 62 FCC 2d 703, 705-06 (1976) (Customer may not withhold payment of properly billed tariffed charges for voluntarily ordered services).

[4] Business Choice Network v. AT&T, _____ FCC Rcd _____ (Enf.Div.Com.Car.Bur.1992); slip op., DA 92-1582 (released Nov. 18, 1982) at 2.

[5] *Id.* at 3, *citing* Mocatta Metals, 54 FCC 2d 104, 117-18 (ALJ R. Lozner 1975).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

USA TODAY File No. 155-DSE-P/L-92
Sky Radio

For Blanket License for 2000
Receive-only Mobile Earth Stations
To be Mounted on Aircraft

ORDER AND AUTHORIZATION

Adopted: December 1, 1992; Released: December 7, 1992

By the Chief, Domestic Facilities Division:

1. Sky Radio Partners, d/b/a USA Today Sky Radio (Sky Radio), has requested a blanket authorization to construct and operate two thousand mobile receive-only earth stations that will be mounted on domestic aircraft. These earth stations will be used to provide audio service, including news and sports programming, to airline passengers. The antennas will receive transmissions in the 12 GHz downlink frequency band from fixed satellites. Sky Radio has also requested a waiver of the Table of Frequency Allocations (allocation table),[1] to permit a non-conforming use of these downlink frequencies. Sky Radio's application was placed on public notice and no oppositions or comments were filed. Sky Radio is providing service pursuant to special temporary authority for operation of up to 500 earth stations.[2]

2. Sky Radio describes the technical characteristics of its system as follows: The programming will be prepared in a programming center in Arlington, Virginia and will be uplinked to GTE Spacenet Corporation's (GTE) GSTAR III satellite from an existing earth station[3] in the 14 GHz frequency band. Sky Radio's airplane mounted receive-only earth stations will consist of Ku-Band antenna subsystems and receiver subsystems that receive, demodulate, decode and distribute the information to the onboard audio system. The antenna subsystem is a mechanically steerable phased array antenna mounted on the top of the aircraft hull. The antenna tracks the desired satellite through normal flight operations within the continental United States.

3. The transmission consists of three 32 kbps digitized analog audio channels and one 8 kbps control channel. A rate of one half forward error correction is used to improve the system performance by converting the 104 kbps baseband information into a 208 kbps signal. The 208 kbps signal is then spread to 3.328 Mcps using a direct sequence spread spectrum waveform. The resulting signal is bi-phase modulated onto a single uplink carrier. The carrier is then shaped by a five pole butterworth I.F. filter with a bandwidth of 4.7 MHz.

4. Sky Radio indicates that the forward downlink transmitted signal operates near transponder saturation. This results in a downlink power density level that exceeds the limit for routine licensing of Ku-Band digital carriers. Nevertheless, Sky Radio contends that the resulting signal density level is similar to that of an unmodulated TV carrier with spreading waveform. Sky Radio also states that its signal is similar to that authorized in *Qualcomm, Inc., (Qualcomm)*[4] where the licensee was granted authority to provide mobile satellite services in the Ku-Band.

5. Sky Radio acknowledges that its system has the potential to cause interference to adjacent satellites, predominately in the downlink direction. It states that interference would occur if the Sky Radio carrier were operated co-frequency and co-polarized with adjacent satellites. In order to eliminate the potential for harmful interference into sensitive services, Sky Radio states that the carrier center frequency will be selected so as to fall within the guardband between the adjacent satellites' transponders of GSTAR III. Sky Radio also states the interference analysis shows that its carrier would cause potential interference into sensitive SCPC carriers cross-polarized and on the same satellite. It proposes to coordinate the selected frequency assignment with current traffic on the cross-polarized transponder of GSTAR III to eliminate any harmful interference.

6. Grant of Sky Radio's application is in the public interest. First, the waiver requested for a non-conforming use of the 12 GHz band is consistent with Commission precedent. The frequencies Sky Radio proposes to use for its downlink segment, 11.7-12.2 GHz, are allocated on a primary basis in the U.S. to fixed-satellite and contain no allocation for the aeronautical mobile-satellite service.[5] The Commission has stated that although the use of radiocommunication frequencies in the United States must generally be in conformance with the allocation table, non-conforming uses may be allowed in particular situations.[6] Sky Radio proposes to use the same frequencies as those authorized for the downlink service provided by Qualcomm.[7] In granting Qualcomm's authorization, the Commission stated that a non-conforming use for downlink service to mobile earth stations would be permitted because the transmission from a fixed-satellite appears the same regardless of

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[1] 47 CFR Section 2.106.

[2] *See* Letter from Chief, Domestic Facilities Division to Counsel, Sky Radio, October 16, 1992.

[3] The earth station used to provide the uplink transmission for Sky Radio's service is also licensed to GTE. GTE states that the authorization for this facility was modified to cover the technical requirements of Sky Radio's service. *See* FCC File Nos. 439-DSE-P/L-92, 604-DSE-MP/L-92; Letter from GTE to Secretary, FCC, October 6, 1992.

[4] 4 FCC Rcd. 1543 (1989).

[5] 47 CFR Section 2.106. Sky Radio asserts, and we agree, that it should not be classified as a broadcast service.

[6] *Qualcomm, supra* n.4 at para. 11. *See also*, DBS Systems, 92 FCC 2d at 68, Geostar Positioning Corporation, 4 FCC Rcd 4538 (1989), and Mobile Satellite Service Allocation Order, 2 FCC Rcd 1825, 1841 (1986).

[7] Qualcomm is authorized to provide two-way messaging, position location and mobile satellite service using the 14 GHz band for uplink transmission on a secondary basis and the 12 GHz band for downlink transmission pursuant to a waiver for a non-conforming use. *Qualcomm, supra* n.4.

whether it is received by fixed or mobile terminals.[8] As Sky Radio recognizes, its non-conforming use of frequencies is subject to any interference from services that conform to the allocation table. It must terminate operations immediately if its transmissions interfere with those of conforming services.

7. Second, although Sky Radio acknowledges that the characteristics of its transmissions have the potential for causing interference to adjacent satellites, GTE, the licensee of the earth station to be used for the uplink segment and of the space station to be used, GSTAR III, has indicated that it has taken steps to avoid any interference problems. GTE states that it has "assigned the Sky Radio uplink to fall entirely within the guardbands between the adjacent SBS-3 and SBS-4 satellite transponders, thus the potential for harmful interference has been eliminated".[9] GTE also states that it has coordinated the Sky Radio service with Hughes Communications, Inc. with respect to replacement satellites for SBS 3 and 4 that may operate adjacent to GSTAR III.[10] No comments or opposition were filed in response to Sky Radio's application and no complaints of interference have been reported as a result of Sky Radio's operations pursuant to special temporary authority. We find that the potential for increased interference has been adequately addressed by the applicant and its space segment provider.

8. Accordingly, IT IS ORDERED that Application File No.155-DSE-P/L-92 IS GRANTED and Sky Radio Partners d/b/a USA Today Sky Radio IS AUTHORIZED to construct and operate two thousand mobile receive-only earth stations to be mounted on U.S. domestic aircraft to provide aeronautical mobile satellite service in accordance with the technical parameters and formal conditions specified in the attached instrument of authorization and subject to the following additional conditions:

a) Sky Radio Partners d/b/a USA Today Sky Radio shall not cause harmful interference into any conforming service in the 11/7-12.2 GHz band (see 47 C.F.R. § 2.106), and, as a non-conforming user of the frequency band, must accept any interference from any service with superior status authorized to use the 11.7-12.2 GHz band;

b) Sky Radio Partners d/b/a USA Today Sky Radio and GTE Spacenet Corporation must coordinate this service with adjacent satellite operators, both domestic and international, to eliminate the possibility of adjacent satellite interference and must cease transmissions immediately upon notification of interference caused by the nonconforming use of the frequencies;

c) Sky Radio Partners d/b/a USA Today Sky Radio and GTE Spacenet Corporation shall maintain a point of contact to resolve interference complaints arising from the provision of Sky Radio's service and who can arrange to remedy any interference problems immediately or terminate operations if necessary. Sky Radio Partners d/b/a USA Today Sky Radio and GTE Spacenet shall submit the name and telephone number of the contact within 30 days of the release of this order.

d) Sky Radio Partners d/b/a USA Today Sky Radio shall annually file with the Commission a report of the number of mobile receive-only antennas constructed within that year;

e) Sky Radio Partners d/b/a USA Today Sky Radio must file a modification of license and obtain prior Commission approval before changing its space segment provider.

f) Sky Radio Partners d/b/a USA Today Sky Radio shall maintain a log recording all incidents of alleged harmful interference. The log shall document the nature of each incident, the parties involved and the outcome. The log shall be maintained for a five year period after each incident. Sky Radio Partners d/b/a USA Today Sky Radio shall notify the Commission of any complaints within 14 days of its receiving a complaint. Sky Radio Partners d/b/a USA Today Sky Radio shall also inform the Commission of the outcome of the incident within 14 days of its resolution.

9. Sky Radio Partners d/b/a USA Today Sky Radio is afforded thirty days from the date of release of this order to decline the authorization as conditioned. Failure to respond within that period will constitute formal acceptance of the authorization as conditioned.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

[8] *Id.* at para. 12.
[9] Letter from GTE to Secretary, FCC, October 6, 1992.
[10] *Id.*

Before the
Federal Communications Commission
Washington, D.C. 20554

ET Docket No. 92-255

In the Matter of

Amendment of Part 18 to Remove Unnecessary Regulations Regarding Magnetic Resonance Systems — RM-7903

NOTICE OF PROPOSED RULE MAKING

Adopted: November 4, 1992; Released: December 7, 1992

Comment Date: March 1, 1993
Reply Comment Date: March 31, 1993

By the Commission:

INTRODUCTION

1. By this action, the Commission proposes to amend Part 18 of its rules to remove regulations that unnecessarily increase the amount of time and money required to bring new non-consumer, medical magnetic resonance (MR) systems to market. These systems are used by medical professionals to study the molecular structure of a patient for diagnostic and monitoring purposes. This proposal addresses a petition for rule making filed by the National Electrical Manufacturers Association on January 29, 1992.

BACKGROUND

2. Part 18 of the rules sets forth requirements designed to minimize the potential for interference to radio and TV services by industrial, scientific and medical (ISM) equipment.[1] Such equipment generates radio frequency (RF) energy in order to perform a non-communications related function. Common examples of consumer ISM equipment include microwave ovens and RF lighting devices. Examples of non-consumer ISM equipment include industrial heaters, RF stabilized arc welders and magnetic resonance equipment. Before ISM equipment can be marketed in the United States, it must comply with the technical standards and equipment authorization procedures specified in Part 18.

3. On January 29, 1992, the National Electrical Manufacturers Association (NEMA) filed a petition for rule making requesting that the Commission amend Part 18 to exempt medical magnetic resonance systems from the technical standards and authorization requirements.[2] MR systems generate radio signals, typically in the HF or low VHF range, below 64 MHz, in order to produce images of body organs. NEMA states that MR systems pose little risk of interference. It notes that MR systems must be capable of detecting very weak radio signals. Therefore, MR systems are shielded against outside radio noise. This same shielding prevents radiation of the radio signals generated by MR systems to the outside environment. NEMA states that it is unaware of any reported instances of interference caused by MR systems. NEMA argues that the required testing is costly and disruptive because it must of necessity be performed in a hospital or health care facility. NEMA notes that in 1986, under similar circumstances, the Commission exempted medical ultrasonic equipment from Part 18 technical standards and authorization requirements.[3]

4. Seven parties filed comments on NEMA's petition.[4] All of the commenters support NEMA's petition. However, Hewlett Packard Company Medical Products Group (HP) urges the Commission to proceed cautiously. HP states that hospital electrocardiogram (ECG) telemetry systems operating in the 450-470 MHz band have experienced interference. HP suggests further investigation is needed to determine whether MR systems have been a source of such interference. In reply, NEMA states that, in view of the wide separation of the frequencies used, there is little reason to suspect MR systems are causing interference to ECG systems.

DISCUSSION

5. As indicated in NEMA's petition, it appears that MR systems pose little risk of interference because of the way they are designed and installed. We also note that there are relatively few installations of MR systems (under 1000), and in the event that measures needs to be taken to correct interference, the locations of the equipment are known.[5] While we appreciate HP's concern about interference to ECG systems, there does not appear to be a basis for identifying MR systems as a likely source of that interference. We also recognize that the authorization requirement is burdensome and costly for MR systems. Given the low volume production of MR systems, this can significantly affect the unit cost of each system, contributing to the increasing costs of medical care.

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[1] *See* 47 C.F.R. Section 18.101, *et seq.*

[2] *See* Petition for Rulemaking of the Magnetic Resonance Section of the National Electrical Manufacturers Association, RM-7903. MR Systems are subject to verification of compliance by their manufacturers. *See* 47 C.F.R. Section 18.203(b). Under the verification requirement, the manufacturer must test the product, retain a copy of the test report and place a label on the product. *See* 47 C.F.R. Section 2.902. Submittal of information to the Commission is required only upon request.

[3] See *Report and Order*, General Docket No. 85-303, 1 FCC Rcd 553 (1986).

[4] Comments were filed by Bruker Medical Imaging, Inc.; General Electric Medical Systems; Hewlett-Packard Company; Philips Medical Systems; Picker International, Inc.; Siemens Medical Systems, Inc.; and Toshiba America MRI, Inc.

[5] U.S. Food and Drug Administration rules require manufacturers to maintain a product locator file for MR systems.

6. We agree with NEMA that the circumstances presented here are similar to those that led us earlier to exempt non-consumer medical ultrasonic equipment from Part 18 rules. We are unaware of any interference that resulted from the medical ultrasonic equipment exemption. On balance, we tentatively conclude that the costs of our technical standards and authorization requirements for MR systems are unwarranted given the low risk of interference. Accordingly, we are proposing to amend Part 18 to exempt MR systems from the technical standards and authorization requirements that now apply to that equipment. We will, of course, continue to apply the requirements of Section 18.111(b) that operators of MR Systems correct any harmful interference that may occur. The proposed rule changes are set forth in the Appendix B.

PROCEDURAL MATTERS

7. *Ex Parte Rules - Non-Restricted Proceeding.* This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generdlly* 47 CFR Sections 1.1202, 1.1203, and 1.1206(a).

8. *Regulatory Flexibility Act.* As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1980).

9. *Comment Dates.* Pursuant to the applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR Sections 1.415 and 1.419, interested parties may file comments on or before **March 1, 1993** and reply comments on or before **March 31, 1993.** To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

10. For further information on this proceeding, contact Mr. Errol Chang, Technical Standards Branch, Office of Engineering and Technology, (202) 653-7316.

FEDERAL COMMUNICATION COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

Reason for Action: This rule making proceeding is initiated to obtain comment on whether the Commission's technical standards and authorization requirements regarding magnetic resonance equipment are necessary.

Objective: The Commission seeks to remove regulations regarding magnetic resonance equipment that appear unnecessary in order to enable advanced medical devices to be brought to market faster and more efficiently.

Legal Basis: The action proposed is authorized under Sections 4(i), 302, 303(g) and 303(r) of the Communication Act of 1934, as amended, 47 U.S.C. Sections 154(i), 302, and 303(r).

Reporting, Recordkeeping and Other Compliance Requirements: None.

Federal Rules which Overlap, Duplicate or Conflict with These Rules: None

Description, Potential Impact and Number of Small Entities Involved: This action would relieve manufacturers and importers of magnetic resonance equipment used for medical diagnosis and monitoring of the responsibility to meet Commission testing and record keeping requirements. We estimate that there are no more than 20 such entities.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with Stated Objective: None

APPENDIX B

Part 18 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 18 - INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

1. The authority citation for Part 18 continues to read as follows:

AUTHORITY: 47 U.S.C. 4, 301, 302, 303, 304 and 307.

2. Section 18.107 is revised by adding a new paragraph (j) to read as follows:

Section 18.107 Definitions.

* * * * *

(j) *Magnetic resonance equipment.* A category of ISM equipment in which RF energy is used to create images and data representing spatially resolved density of transient atomic resonances within an object.

3. Section 18.121 is revised to read as follows:

Section 18.121 Exemptions.

Non-consumer ultrasonic equipment, and non-consumer magnetic resonance equipment, that is used for medical diagnostic and monitoring applications is subject only to the provisions of Section 18.105, Sections 18.109 through 18.119, and Section 18.303 of this Part.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: November 20, 1992

COMMISSION GIVES INSTRUCTIONS CONCERNING MOTION FOR DISQUALIFICATION IN SCHURZ COMMUNICATIONS, INC. V. FCC No. 91-2350 *et al.*

On November 18, 1992, a number of parties filed a motion for disqualification in the case of *Schurz Communications, Inc.* v. *FCC*, No. 91-2350 *et al.* The Court on the same day directed all parties, including the Commission, to respond to this motion and to do so by November 23, 1992.

In response, the Commission instructed the General Counsel to file a response with the United States Court of Appeals for the Seventh Circuit supporting the motion "for essentially the reasons set forth therein."

Action by the Commission November 20, 1992 by Public Notice (FCC 92-519). Commissioners Marshall, Barrett and Duggan, with Commissioners Sikes (Chairman) and Quello dissenting and issuing statements.

FEDERAL COMMUNICATIONS COMMISSION

Separate Statement of Chairman Alfred C. Sikes on Motion for Disqualification in Schurz Communications, Inc. v. FCC, No. 91-2350 (7th Cir. 1992)

The question of whether Judge Posner should or should not recuse himself from this case is one, I believe, that is best resolved by the Judge himself. I accordingly express no opinion on the merits of the recusal motion now before the Court.

I would note, however, that judges and FCC Commissioners alike face periodic challenges to their impartiality, particularly when they are asked to resolve highly-charged and controversial issues. Just as Judge Posner has assessed the propriety of his involvement in this case, so, too, have the current Commissioners had to resolve whether they should participate in certain matters.

I cannot recall an instance in which any of my colleagues has chosen to recuse him or herself from an issue. And, as an individual Commissioner, I have been appreciative that my impartiality has not been questioned in the aftermath of a difficult decision. Indeed, all of our personal decisions have been extended great deference. I simply believe Judge Posner is entitled to similar deference here.

Fundamental fairness also dictates that attacks on a decisionmaker's impartiality should be made before, not after, a decision on the merits is reached -- particularly when the parties are aware of the alleged conflict beforehand. Persons who raise the issue only after an adverse judgment has been rendered risk creating the impression that they are manipulating the judicial process for their own ends or, worse yet, that political forces are compelling them to do so.

Dissenting Statement of Commissioner James H. Quello.

In Re: Motion for Disqualification filed in *Schurz Communications, Inc. v. FCC*, No. 91-2350 (7th Cir.).

To argue "that a judge improperly participated in a case from which he or she should have recused constitutes a charge most grave." *Maier v. Orr*, 758 F.2d 1578, 1583 (Fed. Cir. 1985). To do so without a valid basis or for tactical reasons "trifle[s] with the court and the administration of justice." *Id.* at 1584. Or, as in this case, filing a motion for disqualification out of disappointment with a court's ruling "exceeds the bounds of advocacy open to counsel as officers of the court."[1] Sadly, Petitioners' *Motion for Disqualification* ("*Motion*") adds one final graceless note to a proceeding that has been tainted from the beginning with behind the scenes maneuvering and baseless hyperbole.

I dissent to the Commission's involvement in this matter. While private counsel can perhaps be excused for acceding to clients' demands after a disappointing ruling, this agency must be above such impulses.

The *Motion* should be seen for what it is — a belated and obvious effort to avoid an adverse result. While it is understandable that the parties' attitudes toward the decision would be governed by their interest in the outcome, there should be at least some restraint on the tactics employed. But the unfortunate history of this proceeding counsels against such optimism. The administrative proceeding was sharply polarized along industry lines,[2] and the litigation has been characterized by jurisdictional disputes. Petitioners sought to avoid a hearing in this Circuit, presumably to prevent

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[1] *Maier v. Orr*, 758 F.2d at 1584. Nothing in this statement should be construed as criticism of the Commission's Office of General Counsel. In its filing in this matter, that Office is merely following the directions of a majority of commissioners — as it must — even when the instructions are misguided.

[2] *See Evaluation of the Syndication and Financial Interest Rules*, 6 FCC Rcd. 3094, 3214-15 (1990) (Dissenting Statement of Commissioner Quello).

the result that occurred. Such efforts are permissible. But to challenge the integrity of a judge because the litigants dislike the outcome crosses the line.

Such tactics are not authorized by the federal law governing judicial disqualification. "The drafters of section 455 warned judges against litigants who would try to select a judge of their choice or avoid an expected ruling of a judge." *State of Idaho v. Freeman*, 507 F. Supp. 706, 728 (D. Idaho 1981). Indeed, the legislative history of the law makes clear that litigants "are not entitled to judges of their own choice" and suggested that the section should be applied narrowly where there is the risk of gamesmanship. As emphasized in the Senate Report:

> [I]n assessing the reasonableness of a challenge to his impartiality, each judge must be alert to avoid the possibility that those who would question his impartiality are, in fact, seeking to avoid the consequences of his expected adverse decision. Disqualification for lack of impartiality must have a *reasonable* basis. Nothing in this proposed legislation should be read to warrant the transformation of a litigant's fear that a judge may decide a question against him into a "reasonable fear" that the judge will not be impartial.

S. Rep. No. 93-419, 93d Cong., 1st Sess. 1973, p. 5 (emphasis in original).

Because of this concern, it is well-settled that section 455 requires that parties who suspect impartiality must seek recusal at "the earliest possible moment after knowledge of the facts demonstrating the basis for disqualification." *United States v. Patrick*, 542 F.2d 381,390 (7th Cir. 1976), *cert. denied*, 430 U.S. 931 (1977). *See In re Bokum Resources Corp.*, 26 B.R. 615 (D.N.M. 1982); *United States v. Kelly*, 519 F. Supp. 1029, 1050 (D. Mass. 1981). Otherwise, litigants may be tempted to take their chances until an adverse ruling forces their hand. Courts have noted that "[f]ailure to impose a timeliness requirement on motions brought under section 455 'would authorize disgruntled litigants to [seek recusal] after testing the temper of the court.'" *United States v. Kelly*, 519 F. Supp. at 1050, quoting *United States v. IBM*, 475 F. Supp. 1372, 1377 (SDNY 1979), *aff'd, sub nom. In re IBM*, 618 F.2d 923 (2d Cir. 1980).

But as Petitioners' Motion reveals, their strategem was not played out until quite late in the game. Petitioners admit, for example, that they discovered Judge Posner's involvement in the earlier antitrust proceeding "the week before oral argument." *Motion* at 6. Although the matter could have been raised before or during oral argument, Petitioners decided — for reasons left unstated — not to do so.[3]

I understand the reluctance to challenge a judge during the course of argument, but Petitioners cannot be said to have raised the issue "at the earliest possible moment" thereafter. Petitioners could have filed their motion the first week after the argument, but evidently decided against it. Instead, a month passed without action, until the panel's admittedly stinging opinion was issued. Still, no motion. Petitioners finally decided to file a motion virtually on the eve of the due date for supplemental briefs on an issue Petitioners reportedly believe will be decided adversely. Whatever excuses might be offered for not raising the issue at oral argument or immediately thereafter, section 455 will not tolerate a recusal demand filed after an adverse ruling when the asserted grounds were known in advance. *Union Carbide Corp. v. U.S. Cutting Service, Inc.*, 782 F.2d 710, 716 (7th Cir. 1986) ("The client evidently was distressed by some rulings made by [the judge] in the interim. This is not a good reason for delay, at least where the ground for disqualification is merely an appearance of partiality."); *United States v. Slay*, 714 F.2d 1093, 1094 (11th Cir. 1983) (*per curiam*), *cert. denied*, 464 U.S. 1050 (1984); *Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1115 (5th Cir.), *cert. denied*, 449 U.S. 820 (1980); *United States v. Conforte*, 457 F. Supp. 641, 653 (D. Nev. 1978), *aff'd*, 624 F.2d 869 (9th Cir.), *cert.*

[3]Petitioners note that they did not learn that Judge Posner would be on the panel "until the morning of argument." *Motion* at 6. But since Petitioners sought to avoid a hearing in the Seventh Circuit because (I am certain) Judge Posner or some other jurist familiar with economic concepts might preside, and given a week's notice, there is no reason the issue could not have been raised before oral argument.

denied, 449 U.S. 1012 (1980); *cf. United States v. Murphy*, 768 F.2d 1518, 1539 (7th Cir. 1985), *cert. denied*, 475 U.S. 1012 (1986).

Rather than bringing the matter promptly before the Court, Petitioners' first words on the subject of recusal appeared in *Variety*, several weeks after oral argument. Indeed, Petitioners' lead counsel was quoted extensively in an article that read more like a legal brief than most stories that appear in *Variety's* pages.[4] This and several other articles attached to Petitioners' *Motion* are being cited as grounds for disqualification. "An objective observer would question whether a judge could be impartial," Petitioners urge, where, as here, the issues have "already become the subject of attention in both the general press and the trade press." *Motion* at 10. But Petitioners' use of passive voice in describing press accounts cannot mask the active involvement of counsel in helping the matter "become the subject of attention."

It is axiomatic that a litigant cannot achieve recusal by manufacturing a conflict with a presiding judge. Disqualification is not required, for example, where a party sues or threatens to sue the judge presiding over his case. *In re Martin-Trigona*, 573 F. Supp. 1237 (D. Conn. 1983), *appeal dismissed*, 770 F.2d 157 (2d Cir. 1985), *cert. denied*, 475 U.S. 1058 (1986). By the same token, a litigant cannot point to press accounts that raise questions about a judge's impartiality when that party was instrumental in generating the questions in the first place.[5]

Petitioners' substantive argument is similarly contrived. They argue for disqualification because "Judge Posner will ultimately have to sit in judgment on the FCC's rebuttal to Professor Posner's expert theory." *Motion* at 13 (emphasis in

[4] *See Finsyn Judge's Past Disrobed*, WEEKLY VARIETY, October 26, 1992 at 21, filed as part of Petitioner's *Motion*, Attachment B. One can only marvel at the evident enterprise of a trade press reporter who conducts such extensive legal research.

[5] If Petitioners had any intent other than to create a controversy, the appropriate response to reporters' questions (if any would have been forthcoming) would have been "no comment." But the sequence of events — articles quoting Petitioners after oral argument followed by the Motion which cited the articles as a reason for recusal — is suspect.

original). Apart from the fact that neither Judge nor Professor Posner has ever participated in any proceedings before the FCC and has had no role in opposing or supporting the rules at issue *in this case*, this argument ignores the context in which Judge Posner's affidavit was submitted 15 years ago.[6] It was provided as expert opinion in an antitrust case involving many of the same underlying issues before the Commission. But Petitioners conveniently overlook the fact that the FCC majority repeatedly stressed in the *Report and Order* that the decision was not based on "antitrust principles,"[7] which was the subject of the affidavit. By contrast, the Court's decision, which Petitioners evidently hope to topple with a collateral attack, turns on whether the Commission complied with the requirements of the Administrative Procedure Act.

Recognizing this difficulty, Petitioners attempt to broaden the standard to require disqualification whenever a judge has previously provided expert opinion on a given area of law. But this is not, and has never been, the correct standard. It would disqualify judges from sitting on almost any matter in which they had developed expertise before coming to the bench. Accordingly, Justice Rehnquist was not disqualified from hearing a case where he previously had been "an expert witness for

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[6]Petitioners make much of the fact that the affidavit was submitted in the separate proceeding on behalf of CBS, one of the litigants in this case. But a prior association with a party more than a decade in the past is not grounds for disqualification. *E.g., Alexander v. Chicago Park Dist.*, 773 F.2d 850 (7th Cir. 1985), *cert. denied*, 475 U.S. 1095 (1986); *In re Allied Signal, Inc.*, 891 F.2d 974 (1st Cir. 1989); *Cipollone v. Ligett Group, Inc.*, 802 F.2d 658 (3d Cir. 1986), *cert. denied*, 479 U.S. 1043 (1987). Nor does the possibility that Judge Posner may have learned something about the television programming market from his previous experience require recusal. *United States v. Patrick*, 542 F.2d at 390; *In re Wyoming Tight Sands Antitrust Cases*, 726 F. Supp. 288, 291 (D. Kan. 1989).

[7]The majority stressed that "diversity in programs and program sources" is based on a "broader public interest mandate" than mere "antitrust principles." *Evaluation of the Syndication and Financial Interest Rules*, 6 FCC Rcd. at 3113 They also noted that the networks "may not possess monopsony power in an antitrust sense" and "the instant case may not involve a Sherman Act violation." *Id.* at 3109, 3124.

the Justice Department in Senate hearings inquiring into the subject matter of the case." *Laird v. Tatum*, 409 U.S. 824, 825 (1972).[8]

It would be senseless to disqualify judges in broad areas of the law in which they were active earlier in their careers. Fortunately, section 455 does not require senselessness. Accordingly, Justice Frankfurter was not barred from hearing cases on the Norris-LaGuardia Act although as a law professor he had been a principal draftsman of the statute and had been a strong public advocate for its passage. *Id.* at 832. Similarly, Justice Jackson "participated in a case raising exactly the same issue that he had decided as Attorney General." *Id.* Judge Posner's involvement in a different case involving a different legal standard before a different tribunal with no connection to the finsyn rules 15 years ago does not deserve the overblown attention it is now given.[9]

Under normal circumstances, I would not be concerned that a litigant has chosen to pursue a foolish or desperate litigation strategy. It happens. But here, the Commission majority has been persuaded to join an unsupportable recusal effort. This choice could reflect on the Commission's credibility. I cannot accept the majority's decision to support the Petitioners' *Motion*. Therefore, I dissent.

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[8]Petitioners attempt to distinguish *Laird v. Tatum* by saying Justice Renquist denied prior knowledge of disputed facts in that case. But Petitioners' broad condemnation of a judge's prior involvement with the "subject matter" of a controversy would not have exonerated Justice Rehnquist, who denied knowledge of a "particular print-out" at issue in the case. Nor would it let him off the hook as a result of his connection with the Justice Department, a litigant in the case before him. Petitioners finally argue that *Laird* was decided before the "duty to sit" doctrine was eliminated. But that change was not dispositive with respect to the broad principles enunciated in *Laird*. *See also State of Idaho v. Freeman*, 507 F. Supp. at 722 (courts continue to apply a limited version of the duty to sit doctrine because of possibility that litigants will attempt to manipulate the judicial process) (citing cases and legislative history).

[9]Also, given the focus on Judge Posner, it is easily overlooked that the Seventh Circuit's decision in this case was unanimous.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: November 20, 1992

COMMISSION RESPONDS TO COURT REQUEST IN *SCHURZ COMMUNICATIONS, INC. V. FCC,* Seventh Circuit No. 91-2350

On November 5, 1992, the United States Court of Appeals for the Seventh Circuit decided to vacate and return to the FCC for further proceedings the Commission's April 9, 1991 decision relaxing and modifying the financial interest and syndication rules. *Schurz Communications, Inc. v. FCC,* No. 91-2350 (7th Cir.). The Court stayed its order for 30 days, however, to permit parties to file supplemental briefs regarding the status of the rules pending the Commission's completion of the further proceedings directed by the Court.

In response, the Commission instructed the General Counsel to file a supplemental brief with the Court in accordance with the following information and to urge the Court to keep in place the amended financial interest and syndication rules pending remand.

As emphasized throughout the 1991 *Report and Order,* 6 FCC Rcd 3094 (1991), the Commission concluded that the 1970 financial interest and syndication rules should be relaxed and modified --not eliminated. The text and ordering clause of that decision accurately reflect the Commission's unitary determination to amend the 1970 rules. The Commission did not make two separate or severable decisions to repeal the original rules and adopt new rules. Thus, the purely ministerial deletion of the text of the original rules in the Code of Federal Regulations (as set forth in Appendix B to the *Report and Order)* should not be misread as anything more than mere housekeeping. This ministerial act in no way reflected any Commission intention that the original financial interest and syndication rules be repealed regardless of whether the 1991 amended rules were later vacated.

Vacating the 1991 rules could therefore only have the effect of restoring the 1970 rules. Because returning to the original rules would potentially disrupt the marketplace for television programming, however, the Court should keep the amended rules in place temporarily until the Commission can complete a remand proceeding. The Commission intends to complete such a proceeding on or before its July 1993 open meeting.

Action by the Commission November 20, 1992 by Public Notice (FCC 92-520). Commissioners Marshall, Barrett and Duggan, with Commissioners Sikes (Chairman) and Quello dissenting and issuing statements.

FEDERAL COMMUNICATIONS COMMISSION

Separate Statement of Chairman Alfred C. Sikes
In Re: Supplemental Brief Filed in Schurz Communications, Inc. v. FCC, No. 91-2350 (7th Cir. 1992)

I wholeheartedly agree with my colleague Commissioner Quello that the Court should vacate the 1991 financial interest and syndication ("fin/syn") rules and leave no rules in place while the Commission conducts the required remand proceeding. I thus concur in Commissioner Quello's dissenting statement on this issue.

Beyond the questions of substance and the contentions of merit, there is an especially crucial basis for vacating the current rules. As this proceeding's long and tortured history reveals, the inertia exerted by the fin/syn restrictions falls just short of the magnetic force of the South Pole. Vacating the rules will break the force field and protect the Commission from being stymied by the intense lobbying efforts of those who benefit from maintaining the status quo.

This is especially important given the FCC's pivotal and resource-demanding role in encouraging and facilitating new technologies and investment. This proceeding has an almost organic perverseness. It attracts the most time-consuming and virulent lobbying and contention imaginable. It has attacked the integrity, processes and collegiality of the Commission. Accordingly, the Court not only should promote the proper legal result; it also should help assure a timely one so that the FCC is not pulled involuntarily from its important mission and the parties are freed to move on.

Dissenting Statement of
Commissioner James H. Quello,
in which Chairman Alfred C. Sikes concurs.

In Re: Supplemental Brief filed in *Schurz Communications, Inc. v. FCC*, No. 91-2350 (7th Cir.).

The Court's initial Order in this case quite properly vacated the financial interest and syndication ("finsyn") rules as being "unreasoned and unreasonable." *Schurz Communications, Inc. v. FCC*, No. 91-2350, *slip op.* at 22 (7th Cir.). In response, the Commission majority asks the Court to retain the discredited rules pending the results of "further expedited proceedings . . . consistent with the Court's opinion." *Supplemental Brief for FCC* at 2 (*"Majority Brief"*).

While I do not object to reopening a proceeding to examine finsyn issues, there is little to be gained by starting with rules that are unsupported by fact or logic. Six months may give the majority enough time to grow a new coat for the rules, but in the end, I fear we would be stuck with the same scrawny cat.

Because I share the Court's concern that we should not simply encourage the creation of "a more polished rationalization" on remand, *slip op.* at 12, I believe it makes more sense to start with a clean slate. Accordingly, I dissent from the majority's request to retain the 1991 finsyn rules.

I. The 1970 Finsyn Rules Are Dead, Gone and Awaiting Interment.

The only issue properly before the Court is whether to retain the new rules for a brief period or to eliminate finsyn rules entirely. There is no basis for the Court's concern (or the majority's insinuation) that vacating the Commission's order would cause the 1970 finsyn rules to "spring back into effect." *Slip op.* at 22. None of the parties appealed that portion of the order that deleted the old rules. Even the most ardent supporters of regulation, who urged the Court to require ever more onerous restrictions, did not challenge "the Commission's decision to eliminate many of the

restrictions imposed by its former Rule." *Joint Brief of Petitioners Coalition to Preserve the Financial Interest and Syndication Rule, et. al.* at 32.[1] In contrast, network petitioners specifically asked the Court to vacate the *1991 Report and Order* and *Reconsideration Order* "except to the extent that they repeal the fin-syn regulations imposed in 1970." *Brief of Petitioners CBS, Inc., CBS Television Network Affiliates Association, amd Schurz Communications, Inc.* at 49 & n.194. It also is noteworthy that the only aspect of this proceeding about which all five FCC commissioners agree is that the 1970 rules are obsolete and should be deleted.

The majority's brief suggests that it is "beyond the Court's authority" to vacate the 1991 rules but to uphold the Commission's elimination of the 1970 finsyn rules.[2] This is absurd. The U.S. Court of Appeals for the D.C. Circuit faced a very similar situation in *Home Box Office, Inc. v. FCC*, where it set aside the Commission's "pay cable" rules while upholding essentially the same regulations for subscription television stations. 567 F.2d 9 (D.C. Cir.) *cert. denied*, 434 U.S. 829 (1977). In an interconnected series of rulemaking proceedings, the Commission had adopted rules restricting the types of feature films and sporting events that could be shown on premium cable channels and subscription broadcast stations. The goal of the rules

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[1]The Coalition on reconsideration argued that "retention of the financial interest and syndication rules would best serve the public interest and question[ed the Commission's] decision to relax the rules." *Memorandum Opinion and Order, Evaluation of the Syndication and Financial Interest Rules*, 7 FCC Rcd. 345, 349 (1991). However, this position was abandoned on appeal.

[2]*Majority Brief* at 6. The proffered authority for this novel position is a 1985 Court of Appeals decision by (then) Judge Scalia on the subject of curtailment plans for a natural gas pipeline. *See North Carolina v. FERC*, 730 F.2d 790 (D.C. Cir. 1984). But in that case, the Court dealt with a series of compensation arrangements that the agency expressly stated were "not severable." *Id.* at 796 (quoting FERC order). Nothing in that (or any other) decision suggests that a reviewing court may not vacate part of an order while upholding other parts. Judge Scalia issued such an order one year later in *Illinois Commerce Commission v. Interstate Commerce Commission*, 776 F.2d 355 (D.C. Cir. 1985). There, in reviewing ICC rule amendments governing abandonment of railroad lines and permissible subsidies to avoid abandonment, the Court vacated "that portion of the regulation applicable to labor costs in subsidy determinations and [upheld] the portion applicable to labor costs in abandonment determinations." *Id.* at 360. *See also id.* at 360-61 ("We vacate and remand the regulation insofar as it governs subsidy calculations and uphold it insofar as applied to abandonment.").

was to prevent "siphoning" of programming away from conventional television stations.

Like the finsyn rules, the pay cable regulations had as their goal "increas[ing] program diversity." *Id.* at 25. And, like the *Report and Order* at issue here, the Commission attempted to justify the pay cable rules with "conclusory phrases," such as claiming that the regulations would "enhance the integrity of broadcast signals." *Id.* at 28 (citation omitted). The Court found that the Commission's "generalities" crossed "the line from the tolerably terse to the intolerably mute." *Id.* Additionally, the Court found the rules to be unsupported by the record, *id.* at 37-40, illogical, *id.* at 40-42, and in conflict with other Commission policies. *Id.* at 28-32, 43.

In short, the comparison to the finsyn proceeding is complete. Yet there is one final, almost eerie, similarity. Because the pay cable orders under review "amend[ed] previous, more stringent . . . rules," *id.* at 17, various parties urged the Court not to eliminate the regulations but to confine its inquiry to "the rather limited question of the validity of the relaxation of prior Commission rules." *Id.* at 22 n.27. Nevertheless, the Court upheld subscription television rules but "vacate[d] the orders as arbitrary, capricious, and unauthorized by law in all other respects." *Id.* at 18.

Not only does the Court have clear authority to uphold the Commission's deletion of the 1970 rules, such a ruling would be consistent with the Commission's intent. It is beyond dispute that the Commission has no interest in reviving the old regulations.[3] For almost a decade the Commission has believed that the rules are obsolete.[4] I am the only member of the Commission that was present for the 1983 *Tentative Decision* to eliminate the rules. I dissented at the time, because I felt the

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[3] *See, e.g., Majority Brief* at 8.

[4] *See Tentative Decision and Request for Further Comments in Docket 82-345*, 94 F.C.C.2d 1019 (1983). Counting the extensive staff study of the rules published in 1980, the Commission's repudiation of the rules goes back even farther. FINAL REPORT OF THE NETWORK INQUIRY SPECIAL STAFF (1980).

networks wielded sufficient market power to justify Commission concern. But with the vast changes in the media environment that were so thoroughly documented by the current record, I concluded that my concerns were no longer valid.[5] Given my status as the last hold-out to support the 1970 finsyn rules, I can testify that it is long past time to put them to rest.

II. There is No Reason to Retain Unreasonable Rules.

The majority brief urges the Court to remand rather than vacate the 1991 rules, thereby keeping them in force for a limited time. The only reason offered for this purported compromise is to avoid the disruption of replacing rules that have been in effect for some 18 months.[6] But like the repeated incantation of the term "diversity" in the *Report and Order*, the majority's references to disruption are devoid of content.

Frankly, I am at a loss to understand what type of disruption could occur during the remand period the majority proposes even if all finsyn regulations are lifted. Ironically, the majority demonstrates a similar inability when it warns that "a return to the [1970] rules would effectively moot the potential modification of the antitrust consent decrees." *Majority Brief* at 8. The unstated premise of this statement is that the antitrust consent decrees essentially will preserve the status quo, even if the Commission has no rules. While the majority suggests that modification of the consent decrees may be forthcoming, this will occur only if reviewing courts are

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[5] *See Evaluation of the Syndication and Financial Interest Rules*, 6 FCC Rcd. 3094, 3216-19 (1990) (Dissenting Statement of Commissioner Quello).

[6] I agree with the majority that the Court should balance "the seriousness of the order's deficiencies" with "the disruptive consequences of an interim change that may itself be changed." *United Mine Workers v. FMSHA*, 920 F.2d 960, 966-67 (D.C. Cir. 1990). But since this Court seconded Chairman Sikes' prediction that the *Report and Order* would "produce a milestone case on what constitutes arbitrary and capricious decisionmaking," the majority's chosen standard requires some tangible demonstration of the "disruptive consequences" to be avoided. Yet the majority provides none and instead focuses its discussion of potential disruption on the consequences of reimposing the 1970 finsyn rules. This speaks volumes.

convinced that such action would serve the public interest.[7] This process undermines the purported concerns about disruption.

It is important to specify the nature of the potential dislocations. The Commission would not be forcing industry participants to enter transactions that might later need to be undone. One would suspect that the various players may well be loath to make deals until they discern the Commission's final direction. In other words, the potential disruption is largely in the hands of the affected parties. Yet even if some changes are subsequently adopted, what will be the effect? In the case of off-network syndication, it would take several years for a network to acquire sufficient programming inventory even to enter the market. Any remand proceeding presumably would be long concluded by that time. With respect to financial interests, the record in the proceeding suggests that producers may not even realize when a network acquires an interest.[8] Given this evidence, it is uncertain what type of "disruption" the majority anticipates.

One final point requires some thought. Although the Commission concluded in 1983 that finsyn rules should be eliminated, the Court noted that "there was no follow-up to the tentative decision," thus leaving the regulations "in limbo." *Slip op.* at 5. The court attributed this inaction to political pressure. Some undoubtedly would like to see a sequel to the 1983 decision. And while I have no question but that that those who serve in this agency will dutifully uphold the Court's mandate, the trade

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[7] *See, e.g., Memorandum of the United States in Response to Motion of Defendant National Broadcasting Co., Inc. to Modify the Final Judgment* filed in *United States v. NBC*, Civil No. 74-CIV-3601 (C.D. Cal., filed May 7, 1992).

[8] *See, e.g., Evaluation of the Syndication and Financial Interest Rules*, 6 FCC Rcd. at 3232 (Dissenting Statement of Commissioner Quello) (citing testimony of producer who was unaware that ABC had acquired ownership of his series).

press already has begun to fuel speculation that a change in administrations "might rescue the imperiled financial interest and syndication rules."[9]

Of course, there is no way to predict what political changes the future may bring. But speculation about politics can play no part in how the Commission discharges its responsibilities in this case. If under a new administration a new set of finsyn rules is proposed or even adopted by a newly-constituted FCC majority, that is fine (subject to the constraints of judicial oversight). However, it is essential to the integrity of this agency that this proceeding remain focused on the Court's immediate mandate. In another context, the U.S. Court of Appeals for the D.C. Circuit just last week chastised the FCC for engaging in what it called "an administrative law shell game . . . plainly engendered by a desire to keep the rule in effect as long as possible despite serious doubts that the rule could not withstand judicial review."[10] We should go out of our way to avoid the prospect of similar criticism here.

Under the circumstances, I see no reason to permit the Commission to enforce rules already found to be arbitrary and capricious.

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[9]Lambert, *Industry Looks at Life Under New Team*, BROADCASTING, November 9, 1992 at 12.

[10]*AT&T v. FCC*, No. 92-1053, *slip op.* at 8, 11 (D.C. Cir. November 13, 1992). It also is instructive that the D.C. Circuit vacated a Commission order that permitted "non-dominant" common carriers to avoid filing tariffs as required by Section 203(a) of the Communications Act of 1934. The Court apparently did not consider it "too disruptive" to subject virtually all common carriers to the possibility of damage suits in district court. By this standard, the majority's concern over possible disruption in the finsyn proceeding seems misplaced.

I do not mean to imply by citing *AT&T v. FCC* that I agree with the Court's rejection of the Commission's common carrier rules. I refer to it only as an example of the type of opinion we should seek to avoid, rather than invite.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
November 30, 1992

Released: November 30, 1992

John T. Scott, III
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2595

Re: Applications for Authority to Transfer Control of Radio Authorizations from Centel Corporation to Sprint Corporation, File No. 08374-CL-TC-1-92 et al.

Dear Mr. Scott:

This is in reference to the "Motion for Extension of Time" filed on behalf of Mr. Francesco Galesi on November 24, 1992 (Motion). The Motion seeks extensions of time from November 30, 1992 to December 30, 1992, and from December 13, 1992, "to January 13, 1992 [sic]" for Mr. Galesi to file comments and reply comments, respectively, in the above-referenced matter. In support of the requested extensions, you state that Mr. Galesi and Centel Network Company, a wholly-owned subsidiary of Centel Corporation, currently are engaged in civil litigation in the United States District Court for the Southern District of New York and that Mr. Galesi believes information being developed in that litigation pertaining to a past telecommunications venture now in bankruptcy "should be of direct interest to the Commission in considering Centel's qualifications to be a Commission licensee and to transfer control of its licenses." Motion at 1-2. On November 25, 1992, Centel Corporation and Sprint Corporation (Applicants) filed a joint opposition to the Motion.

It is the policy of the Commission, set forth in Section 1.46(a) of the Commission's Rules, 47 C.F.R. § 1.46(a), that extensions of time shall not be routinely granted. The reasons advanced in the Motion do not warrant departure from this policy. Initially, we note that the Motion was filed only three business days before the comment filing date specified in the Public Notice and contained no showing to justify why it should not have been more timely filed. See Public Notice, Motions For Extension of Time Before the Common Carrier Bureau, 44 Rad. Reg. (P&F) 2d 96 (1978) (Good cause generally is not demonstrated by showing that parties are engaged in other litigation). We believe that the pleading cycle established in the Public Notice, Report No. CL-93-16 (Oct. 26, 1992) in this matter provides interested parties sufficient time to study and comment on the implications of the subject applications involved in the proposed merger of Centel Corporation and Sprint Corporation. Moreover, we do not wish to delay unnecessarily the resolution of this proceeding.

In light of the above and Applicants' opposition to the Motion, we cannot find that Mr. Galesi has shown good cause for the requested extraordinary relief that he seeks.

Accordingly, pursuant to authority delegated under 47 C.F.R. § 0.291, the Motion for Extension of Time, filed by Francesco Galesi on November 24, 1992, is denied.

So ordered.

FEDERAL COMMUNICATIONS COMMISSION

Gregory A. Weiss
Deputy Chief (Operations)
Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: December 1, 1992

EXPANDED INTERCONNECTION DESIGNATION OF NYNEX WAIVER PETITION AS NON-RESTRICTED

On October 19, 1992, the Commission released a Report and Order in *Expanded Interconnection with Local Telephone Company Facilities,* CC Docket No. 91-141 (FCC 92-440) (Report and Order).

On November 10, 1992, New York Telephone Company and New England Telephone and Telegraph Company (NYNEX) filed an "Emergency Petition for Waiver" (NYNEX Waiver Petition). NYNEX requests waiver of Part 69 of the rules and of the Report and Order to reallocate certain general support facilities expenses from special access to the common line category; to reduce high capacity special access rates in the most competitive areas by up to ten percent, and to file interim expanded interconnection tariffs on 45 days notice, rather than 21 days notice. On November 20, 1992, Local Area Telecommunications, Inc. and MCI Telecommunications Corporation filed oppositions (Oppositions) to the NYNEX Waiver Petition and MFS Telcom, Inc. filed comments (Comments).

We will treat the NYNEX Waiver Petition as a non-restricted proceeding for purpose of the Commission's *ex parte* rules. Thus, *ex parte* presentations are permitted, except during any Sunshine Agenda period, provided they are disclosed as described in the Commission's rules. *See* 47 C.F.R. §§ 1.1200-1.1204 and 1.1206.

Copies of the NYNEX Waiver Petition, Oppositions and Comments can be inspected and copied at the FCC Reference Center, 1919 M Street, N.W., Room 239, from 9:00 a.m. to 4:30 p.m. (202-632-7535). Copies also may be obtained from the Downtown Copy Center, 1990 M Street, N.W., Washington, D.C. 20036 (202-452-1422). For further information, contact David L. Sieradzki (202-632-1304) or Douglas L. Slotten (202-653-6975), Policy and Program Planning Division, Common Carrier Bureau.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-285

In re Applications of:

RUSS ROBINSON (hereafter "Robinson") File No. BPH-910826ML

Barbara Dawson-Monk d/b/a URBAN NETWORK COMMUNICATIONS (hereafter "Urban Network") File No. BPH-910826MM

For Construction Permit for a New FM Station on Channel 265A in Richwood, Louisiana

HEARING DESIGNATION ORDER

Adopted: November 23, 1992; Released: December 8, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *RF Radiation.* Robinson proposes to locate its transmitting antenna on a new tower. Our engineering study indicates that Robinson, in discussing the matter of how it proposes to resolve any RF exposure to workers on its tower, states that it "will advise maintenance personnel that power is to be reduced prior to undertaking any tower or transmitter site maintenance." However, stations are required to reduce power or *cease* operations as necessary to assure worker safety when maintenance is to be performed at the site. *See* 47 C.F.R. § 1.1307(b). Consequently, we are concerned that Robinson may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14,999 (April 12, 1986). *See also, Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 24, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. Section 1.1307 states that an EA must be prepared if the proposed operation would cause exposure to workers or the general public to levels of RF radiation exceeding specific standards. Since Robinson inadequately indicated how workers engaged in maintenance and repair would be protected from exposure to levels exceeding the ANSI guidelines, it will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. *See generally,* OST Bulletin No. 65 (October, 1985) entitled "Evaluating Compliance With FCC-Specified Guidelines For Human Exposure to Radiofrequency Radiation," at 28. Therefore, Robinson will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 2289 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the Environmental Assessment, that the applicant's proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted and the presiding judge shall thereafter not consider the environmental effects of the proposal. *See* 47 C.F.R. § 1.1308(d).

3. *Multiple user tower.* An engineering study of Urban Network's application shows that there are multiple contributors to radio-frequency radiation at Urban Network's proposed tower site. Therefore, Urban Network is ordered to submit a certification that, before commencement of construction, an agreement will be in effect requiring all stations to reduce power or cease operations as necessary to assure worker safety with respect to radio-frequency radiation when maintenance is to be performed at the site.

4. *Financial.* Section III, Item 3 of FCC Form 301 (June 1989) requires that an applicant specify each source of funds, including the name, address, telephone number, contact person if the source is an entity, any relationship of the source to the applicant, and the amount of funds to be supplied by each source. Urban Network has not provided a contact person as requested in Item 3. Accordingly, Urban Network must file an amendment which gives all the information required by Section III, Item 3 with the presiding Administrative Law Judge after this Order is released.

5. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Robinson in which it is concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment, to

determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That, in accordance with paragraph 2 hereinabove, Robinson shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

9. IT IS FURTHER ORDERED, That, in accordance with paragraph 3 hereinabove, Urban Network shall submit an amendment with the necessary certification to the presiding Administrative Law Judge within 30 days of the release of this Order.

10. IT IS FURTHER ORDERED, That Urban Network shall submit an amendment which contains the information required by Section III, Item 3 of FCC Form 301 to the presiding Administrative Law Judge within 30 days of the release of this Order.

11. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. *See generally Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990). *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: December 8, 1992

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON PACTEL'S PETITION FOR STRUCTURAL RELIEF

CC Docket Nos. 88-2, Phase I, and 90-623

On November 23, 1992, Pacific Bell and Nevada Bell (Pactel) filed a notice of compliance with the Open Network Architecture (ONA) requirements for removal of the structural separation requirements that currently govern its participation in the enhanced services industry. Pursuant to the *BOC Safeguards Order*, 6 FCC Rcd 7571, the Bell Operating Companies (BOCs) are permitted to petition the Commission for relief from the structural separation requirements if the BOCs are technically prepared to offer their ONA services, have effective federal tariffs for each of their initial interstate ONA services, and have filed state tariffs for each of their initial intrastate ONA services. Pactel states that it satisfies all of the Commission's conditions for removal of the structural separation requirement.

In addition, Pactel filed a request for waiver of the tariffing requirements for certain ONA services. Pactel states that it seeks a waiver to reclassify three ONA services that were initially classified as BSEs/CNSs. Pactel states that these three services should be classified solely as CNSs.

Interested parties should file comments on Pactel's notice by **December 31, 1992,** and reply comments by **January 19, 1993,** with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: Downtown Copy Center, 1990 M Street, N.W., Suite 640, Washington, D.C. 20036. Copies of Pactel's notice can be obtained from Downtown Copy Center at (202) 452-1422.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally* 47 C.F.R. §§ 1.1200-1.1216. For further information contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-1300.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: December 8, 1992

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON BELLSOUTH'S PETITION FOR STRUCTURAL RELIEF

CC Docket Nos. 88-2, Phase I, and 90-623

On November 13, 1992, BellSouth Telecommunications, Inc., (BellSouth), filed a notice of compliance with the Open Network Architecture (ONA) requirements for removal of the structural separation requirements that currently govern its participation in the enhanced services industry. Pursuant to the *BOC Safeguards Order*, 6 FCC Rcd 7571, the Bell Operating Companies (BOCs) are permitted to petition the Commission for relief from the structural separation requirements if the BOCs are technically prepared to offer their ONA services, have effective federal tariffs for each of their initial interstate ONA services, and have filed state tariffs for each of their initial intrastate ONA services. BellSouth states that it satisfies all of the Commission's conditions for removal of the structural separation requirement. In addition, BellSouth requests that the Commission waive its requirement that BOC enhanced services operations must take the same access to certain BOC operations support systems that BOCs provide to independent enhanced service providers. BellSouth requests the waiver pending a decision on its Petition for Partial Reconsideration and Clarification regarding operations support systems.

Interested parties should file comments on BellSouth's notice by **December 30, 1992,** and reply comments by **January 13, 1993,** with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: Downtown Copy Center, 1990 M Street, N.W., Suite 640, Washington, D.C. 20036. Copies of BellSouth's notice can be obtained from Downtown Copy Center at (202) 452-1422.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally* 47 C.F.R. §§ 1.1200-1.1216. For further information contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-4047.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: December 2, 1992

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON PETITION OF THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE FOR EXPEDITED MODIFICATION OF FRESH LOOK POLICY

CC Docket No. 90-132

On November 6, 1992, the Ad Hoc Telecommunications Users Committee (Ad Hoc) filed a petition for expedited modification of the "fresh look" policy that was adopted in the Commission's September 16, 1991 *Report and Order* in the Interexchange Competition proceeding (CC Docket No. 90-132). The "fresh look" policy will allow customers of Tariff 12s with inbound service that had executed agreements with AT&T or had begun taking service on or before April 16, 1992 to terminate their Tariff 12 arrangements without liability within ninety days of the implementation of 800 number portability. Ad Hoc asks the Commission to extend the "fresh look" period until at least ninety days after full implementation of a notice-and-acceptance functionality in the 800 data base Service Management System (SMS).

Ad Hoc asserts that some large customers will not be able to take advantage of the "fresh look" policy during the current ninety-day time frame because they will not be able to move their traffic from AT&T to other carriers during that period without an unacceptable risk of service disruptions. To minimize this risk, according to Ad Hoc, requires a notice-and-acceptance functionality in the SMS. That functionality would automatically notify a carrier to which a customer had ordered a traffic shift, and would give that carrier view-only access to customer records that would allow the carrier to prepare to receive and bill for the traffic. The order would be carried out only after the carrier had indicated its willingness to accept the traffic.

Ad Hoc states that the lack of an automatic notice-and-acceptance procedure creates the risk of service disruptions and therefore is an obstacle to the exercise of customers' "fresh look" rights. Ad Hoc claims that manual notice-and-acceptance procedures are an inadequate substitute. Ad Hoc therefore asks that the "fresh look" period be extended until after an automated notice-and-acceptance procedure is in place.

Interested parties are to file comments on this petition by **December 17, 1992,** and reply comments by **January 5, 1993,** with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Suzanne M. Tetreault, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's copy contractor, Downtown Copy Center, 1990 M Street, N.W., Suite 640, Washington, D.C. 20036.

For further information, contact Suzanne M. Tetreault or Andre J. Lachance, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-6374 and (202) 632-1305, respectively.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

KENT S. FOSTER File No. 10414-CL-P-666-A-89

For facilities in the
Domestic Public Cellular
Telecommunications Radio
Service on Frequency Block A, in
Market 666, Texas 15 - Concho

FAIR OAKS CELLULAR PARTNERSHIP File No. 10960-CL-P-549-A-89

For facilities in the
Domestic Public Cellular
Telecommunications Radio
Service on Frequency Block A, in
Market 549, New Hampshire 2 - Carroll

PROGRESSIVE CELLULAR III B-2 File No. 10008-CL-P-317-A-88

For facilities in the
Domestic Public Cellular
Telecommunications Radio
Service on Frequency Block A,
in Market 317, Alaska 3 - Haines

PACIFIC NATIONAL CELLULAR File No. 10310-CL-P-402-A-88

For facilities in the
Domestic Public Cellular
Telecommunications Radio
Service on Frequency Block A, in
Market 402, Illinois 9 - Clay

WESTERN CALIFORNIA CELLULAR PARTNERS File No. 10184-CL-P-709-A-88

For facilities in the
Domestic Public Cellular
Telecommunications Radio
Service on Frequency Block A, in
Market 709, Wisconsin 2 - Bayfield

TEN - TEN GENERAL PARTNERSHIP File No. 10616-CL-P-361-A-89

For facilities in the
Domestic Public Cellular
Telecommunications Radio
Service on Frequency Block A, in
Market 361, Florida 2 - Glades

MEMORANDUM OPINION AND ORDER

Adopted: November 30, 1992; Released: December 8, 1992

By the Commission:

I. INTRODUCTION

1. Petitions for reconsideration have been filed regarding two Commission decisions which dismissed or affirmed dismissal of the captioned applications for non-wireline Rural Service Area (RSA) cellular authorizations.[1] The applications were dismissed for failure to include information demonstrating the firm financial commitment required by Section 22.917(c)(5) of the Commission's rules. Petitioners argue that Section 22.917(c)(5) is unenforceable because it was not adopted in accordance with the requirements of the Paperwork Reduction Act of 1980 (PRA).[2] For the reasons discussed below, we grant the petitions, to the extent indicated herein, and reinstate the captioned applications.[3]

II. DISCUSSION

2. Petitioners argue that the Commission failed to comply with the Paperwork Reduction Act (PRA) in adopting Section 22.917(c)(5). They note that under Section 3507(a) of Title 44, United States Code, any new or revised information collection requirement must be approved by the Office of Management and Budget (OMB), and that no

[1] *See Applications for Review and Petitions for Reconsideration of the Return of Rural Service Area Cellular Applications for Having Defective Maps*, 6 FCC Rcd 5378 (1991) (affirming dismissal of the application filed by Western California Cellular Partners (Western)); *Butte Cellular Group*, 6 FCC Rcd 6745 (1991) (dismissing the application of Fair Oaks Cellular Partners (Fair Oaks) and affirming dismissal of the applications filed by Kent S. Foster (Foster), Pacific National Cellular (Pacific), Progressive Cellular III B-2 (Progressive), and Ten-Ten General Partnership (Ten-Ten)). Oppositions were filed in response to the petitions for reconsideration of Fair Oaks, Western, and Progressive, and reply pleadings were filed. The petitions of Foster, Pacific, and Ten-Ten are unopposed.

[2] 44 U.S.C. §§ 3501-3520.

[3] By a letter dated October 21, 1992, Pacific asked that a decision in its case be issued by separate order. We find that Pacific has failed to provide sufficient reason to justify its request, and that issuing a separate order would constitute an inefficient use of Commission resources. Accordingly, Pacific's request is denied.

penalty, such as dismissal, may be imposed for failure to comply with a non-compliant requirement. *See* 44 U.S.C. § 3512.[4] Petitioners concede that the Commission obtained OMB approval for the proposed version of Section 22.917(c),[5] but argue that the Commission made substantive and material changes in the final version of the rule without obtaining additional OMB approval.[6] Petitioners state that, under these circumstances, the Commission may not dismiss their applications for failure to comply with Section 22.917(c)(5).[7]

3. The opposing parties argue that Section 22.917(c)(5) was not substantively or materially changed after approval by OMB. Alternatively, they contend that even if some substantive changes were made, the Commission still has authority to enforce any specific provisions of Section 22.917(c)(5) which were not substantively changed, and can uphold dismissal of Petitioners' applications for failure to comply with such provisions.

4. We find that Petitioners' argument is correct. The final version of Section 22.917(c)(5) consists of an introductory portion specifying the types of institutions that may provide financing, *see* Section 22.917(c)(5), and five statements that the lender must include in its commitment letter. *See* Section 22.917(c)(5)(i)-(v). In comparing the proposed and final versions of Section 22.917(c)(5), we conclude that the introductory portion contains substantive modifications, and three of the five statements involve completely new requirements. *See* Sections 22.917(c)(5)(ii), (iv), and (v). The remaining two statements also have been modified. *See* Section 22.917(c)(5)(i) and (iii). The opposing parties have suggested that, if an applicant violated any provision of Section 22.917(c)(5) that was not substantively modified, that portion of the rule can be enforced, and dismissal of the application upheld. However, we conclude that Section 22.917(c)(5) has been so substantively and materially modified as to render the rule, as a whole, unenforceable under the PRA because of our failure to comply with PRA requirements in adopting the rule.[8] Accordingly, we find that Petitioners' applications should be reinstated and returned to pending status.[9] The applications will be processed consistent with our decision herein.[10]

III. ORDERING PARAGRAPHS

5. Accordingly, IT IS ORDERED THAT the applications filed by Kent S. Foster, File No. 10414-CL-P-666-A-89, Fair Oaks Cellular Partnership, File No. 10960-CL-P-549-A-89, Progressive Cellular III B-2, File No. 10008-CL-P-317-A-88, Pacific National Cellular, File No. 10310-CL-P-402-A-88, Western California Cellular Partners, File No. 10184-CL-P-709-A-88, and Ten-Ten General Partnership, File No. 10616-CL-P-361-A-89, ARE REINSTATED.

6. IT IS FURTHER ORDERED THAT the Petitions for Reconsideration filed by Kent S. Foster, Fair Oaks Cellular Partnership, Progressive Cellular III B-2, Pacific National Cellular, Western California Cellular Partners, and Ten-Ten General Partnership ARE GRANTED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

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[4] Section 3512 states that "[n]otwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved . . . does not display a current control number assigned by the Director [of OMB], or fails to state that such request is not subject to this chapter."

[5] *See* Third Notice of Proposed Rule Making, Amendment of the Commission's Rules for Rural Cellular Service, CC Docket No. 85-388, 3 FCC Rcd 2591 (1988).

[6] *See* 5 C.F.R. § 1320.13(g) (final rule submitted to OMB only if substantively or materially modified after approval as proposed rule); 5 C.F.R. § 1320.11(h) (substantive or material changes must be approved by OMB).

[7] Petitioners also argue that they had, in any event, complied with Section 22.917(c)(5). We need not address this argument here.

[8] *Cf. Dana Communications, Ltd.*, 7 FCC Rcd 1878 (1992) (final version of Section 22.917(c)(6) of the Commission's rules held unenforceable because not approved by OMB). In *Asset Management Corporation*, 6 FCC Rcd 6538 (Mobile Serv. Div. 1991), the Mobile Services Division stated, in dicta, that the final version of Section 22.917(c)(5) was not substantively or materially different from the proposed version of the rule. That statement in dicta is inconsistent with our decision here, and is therefore overruled.

[9] New lotteries have been held for two of the involved RSAs, the Wisconsin 2 - Bayfield RSA (Bayfield RSA) and the Alaska 3 - Haines RSA (Haines RSA). As a result of these lotteries, Mtel Cellular, Inc. (Mtel) was named the new tentative selectee for the Bayfield RSA, *see* Public Notice Report No. CL-90-308, released September 21, 1990, and RJL Cellular Partnership (RJL) was issued a construction permit for the Haines RSA. *See* Public Notice Report No. CL-91-79, released February 1, 1991. However, these actions were conditioned on the outcome of the current proceeding. *See* Lottery Notice No. 3497, released June 8, 1990; Public Notice Report No. CL-91-79.

[10] As part of this processing, the Commission will examine the applications to ensure that the applicants are financially qualified. *See* Section 308(b) of the Communications Act of 1934, 47 U.S.C. § 308(b). We may request supplemental financial showings if necessary. *See* 5 C.F.R. § 1320.5(b)(in case of an unapproved information collection requirement, agency shall permit respondents to satisfy the legal condition in any reasonable manner).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Checkpoint Systems, Inc. NAL/Acct. No.: 315HF0002
550 Grove Road
Thorofare, NJ 08086

NOTICE OF APPARENT LIABILITY

Adopted: November 27, 1992; Released: December 8, 1992

By the Field Operations Bureau:

I. INTRODUCTION

1. This is a Notice of Apparent Liability for Monetary Forfeiture issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), to Checkpoint Systems, Inc., for willful violation of Section 302(b) of the Communications Act, 47 U.S.C. § 302(b), and Section 2.803 of the Commission's rules, 47 C.F.R. § 2.803.

2. The appropriate amount of forfeiture for this violation is $14,000.

II. BACKGROUND

3. On September 9, 1992, engineers from the Atlanta Office performed measurements at two locations where Checkpoint anti-theft systems are used. These devices are field disturbance sensors regulated under Parts 2 and 15 of the rules. One Checkpoint system was installed at the Atlanta Area Technical School in Atlanta, Georgia, and the other was installed at Athens/Clark County Public Library Athens, Georgia.

4. The measurements taken on the Atlanta Area Technical School system showed a frequency sweep between 8.45 MHz and 10.30 MHz. The label attached to the guide rail had the following information:

Checkpoint
Quicksilver Receiver w/Lamp
Part # 696106
Date of Manufacture J2D
Serial # 227-10667-A

There was no FCC identification number on the label. A bill of sale dated March 26, 1992, is evidence of the sale of this system by Checkpoint.

5. The Athens/Clark County Library operated three Checkpoint systems. Two were measured operating between 9.125 MHz and 10.925 MHz and the other between 7.45 MHz and 8.94 MHz. None of the units were labeled with an FCC identification. All three were identified with simply "Signature Series". The power supply (located separately) for the system that operated above 10 MHz was labeled "Checkpoint". A bill of sale dated June 16, 1992, is evidence of the sale of these devices by Checkpoint.

6. The devices here are required to be certified. See 47 C.F.R. §§ 2.201(b), 15.3(o). It appears the Quicksilver system was originally certified under FCC ID # D0463D2G and the Signature system was originally certified under FCC ID # D0463DM3. The certification for both units was restricted to operation on frequencies below 10 MHz.

7. Section 2.931 of the rules provides, in pertinent part, that "In accepting a grant of an equipment authorization the grantee warrants that each unit of equipment marketed under such grant and bearing the identification specified in the grant will conform to the unit that was measured and that the data ... filed with the application for type acceptance or certification ... continues to be representative of the equipment being produced under such grant within the variation that can be expected due to quantity production and testing on a statistical basis." 47 C.F.R. § 2.931.

8. Changes to the opertaing frequency of a certified device must be approved by the Commisssion as either a Class II permissive change or a new certification. See 47 C.F.R § 2.1043. The subject equipment has not been authorized to operate above 10 MHz.

III. DISCUSSION

9. Checkpoint Systems has violated Section 302(b) of the Communications Act by marketing anti-theft devices which do not conform to the equipment authorization and therefore are not considered certified as required by the rules.

10. The violation is willful.

11. Pursuant to our *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *modified in part on recon.*, FCC Rcd 5339 (1992), the base forfeiture amount is $7,000. Because there were two separate violations, the forfeiture is $14,000. No adjustments appear warranted.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Checkpoint Systems, Inc., IS APPARENTLY LIABLE FOR A MONETARY FORFEITURE in the amount of $14,000 for marketing equipment in violation of Section 302(b) of the Communications Act. The amount specified was determined after consideration of the factors set forth in Section 503(b) of the Communications Act.

13. IT IS FURTHER ORDERED, that Checkpoint Systems, Inc., shall, within thirty (30) days of the release of this Notice, pay the full amount of the forfeiture or file a written response showing why the forfeiture should be reduced or not imposed. Any written response must include a detailed factual statement and supporting documentation. Forfeitures shall be paid by check or money order payable to the Federal Communications Commission. The remittance should be marked "NAL/Acct. No.: 315HF0002" and mailed to the following address:

Federal Communications Commission
P.O. Box 73482
Chicago, Illinois 60673-7482

Send written responses regarding why the forfeiture should be reduced or not imposed to:

Federal Communications Commission
Field Operations Bureau
Enforcement Division-1500E3
1919 M Street, NW
Washington, D.C. 20554

NAL/Acct. No.: 315HF0002

14. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Monetary Forfeiture shall be sent to Checkpoint Systems, Inc., 550 Grove Road, Thorofare, NJ, 08086.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Richards
Chief, Enforcement Division
Field Operations Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

INTERNATIONAL
TELECHARGE, INC.,
Complainant,

v. File No. E-92-77

ROCHESTER
TELEPHONE COMPANY,
Defendant.

ORDER

Adopted: December 2, 1992; Released: December 8, 1992

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On May 4, 1992, International Telecharge, Inc. (ITI), filed the above-captioned formal complaint against Rochester Telephone Company (Rochester) seeking to recover damages from Rochester for alleged violations of the Commission rules in connection with Rochester's computation and assessment of terminating carrier common line ("CCL") charges. On November 16, 1992, ITI and Rochester filed a joint motion to dismiss the complaint stating that the parties have negotiated a mutually agreeable settlement of all pending controversies.

2. We are satisfied that dismissal of the complaint will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and authority delegated under Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the parties' Joint Motion to Dismiss Complaint IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED WITH PREJUDICE and that the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory A. Weiss
Deputy Chief (Operations)
Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-277

In re Applications of

GLORIA BELL BYRD	File No. BPH-880912MC
ORMOND BROADCASTING, INC.	File No. BPH-880915MI
deHARO RADIO, LTD., A FLORIDA LIMITED PARTNERSHIP	File No. BPH-880915MJ
O.B.S. RADIO LIMITED PARTNERSHIP	File No. BPH-880915MN
B H BROADCASTING, INC.	File No. BPH-880915MQ
McFAYDEN BROADCASTING LIMITED PARTNERSHIP	File No. BPH-880915MR
GREENE COMMUNICATIONS, LTD.	File No. BPH-880915MW

For Construction Permit for
New FM Station, Channel 239A,
Ormond-By-The-Sea, Florida

Appearances

Jerrold Miller, Esq., on behalf of Gloria Bell Byrd; *Gary S. Smithwick, Esq.* and *J. Daniel Gillick, Esq.*, on behalf of Ormond Broadcasting, Inc.; *Cary S. Tepper, Esq.*, on behalf of deHaro Radio, Ltd., A Florida Limited Partnership; *Stephen Diaz Gavin, Esq.* and *J. Jeffrey Cravin, Esq.*, on behalf of B H Broadcasting, Inc.; *Vincent A. Pepper, Esq.* and *Louise Cybulski, Esq.*, on behalf of McFayden Broadcasting Limited Partnership; and *Denise B. Moline, Esq.*, and *Robert L. Galbreath, Esq.*, on behalf of Green Communications, Ltd.

DECISION

Adopted: November 24, 1992; Released: December 10, 1992

By the Review Board: MARINO (Chairman), BLUMENTHAL and GREENE.

BOARD MEMBER BLUMENTHAL:

1. The Board has before it the *Initial Decision*, 7 FCC Rcd 2861 (1992) (*I.D.*), of Administrative Law Judge Edward Luton (ALJ) in the above-captioned proceeding. It also has before it the exceptions and reply pleadings filed by the remaining parties.[1] The *I.D.* awarded the Construction Permit to McFayden Broadcasting Limited Partnership over the applications of some considered by the ALJ to be very close competitors, particularly Gloria Bell Byrd and Greene Communications, Ltd. *See I.D.*, para. 118. For the reasons set forth below, we grant several of the crucial exceptions lodged by the parties and find that Gloria Bell Byrd should prevail under our *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965).[2] We shall examine the exceptions, to the extent decisional, as they relate to particular applicants.

McFAYDEN BROADCASTING LIMITED PARTNERSHIP

2. McFayden Broadcasting, depicted as a Delaware limited partnership, reports two principals: (1) Dawn F. McFayden, the "general" partner said to hold a 20% equity share; and (2) Carl J. Tutera, Jr., the "limited" partner said to hold an 80% equity share. *I.D.*, para. 61. Ms. McFayden, who learned of this frequency availability from Tutera and who entered the University of Georgia Law School two years after this application was filed, proposes nonetheless to abandon her pursuit of the law and to manage this facility on a full-time basis should this application prevail. *See id.*, paras. 62-65. Because of her minority status and her 28-year residence in Daytona (within the 3.16 mV/m (70 dBu) city-grade contour of the proposed station), the *I.D.* found this applicant comparatively superior on an overall basis. *See id.*, paras. 115-118.[3]

3. *Exceptions.* All of the exceptors challenge the award of 100% "integration" credit to McFayden.[4] As a threshold matter, several of the exceptors argue that inasmuch as McFayden failed to specially introduce its limited partnership agreement into evidence, it has failed to "prove" on the record that its "limited" partner, Tutera, is sufficiently insulated; and, it follows claim these exceptors, that McFayden has failed its burden to demonstrate its entitlement to the 100% (extrapolated) "integration" credit it seeks. McFayden does not reply directly to this precise

[1] The application of Agape of Central Florida, Inc. was previously dismissed with prejudice, *see Memorandum Opinion and Order*, 7 FCC Rcd 5240 (Rev. Bd. 1992), pursuant to a settlement agreement. Another applicant, O.B.S. Radio Limited Partnership, did not prevail in the *I.D.*, but has filed no exceptions thereto. Its application will be dismissed for failure to prosecute. *See* 47 CFR Section 1.276(f).

[2] In *Bechtel v. FCC*, 957 F.2d 873 (D.C. Cir. 1992), the panel remanded to the agency the question of the continuing validity of the ownership/management "integration" criterion of the 1965 *Policy Statement*. Although the court's remand generated a reexamination of our comparative criteria, the Commission's response in *Anchor Broadcasting Limited Partnership*, 7 FCC Rcd 4566 (1992), holds that we shall apply the criteria of the 1965 *Policy Statement* unless and until modified as a result of the current inquiry.

[3] Since the qualitative attributes of only "active" principals (such as "general" partners or "voting" stockholders) are calculated for "integration" purposes, Ms. McFayden's 20% equity interest was extrapolated to a 100% quantitative credit for purposes of all qualitative comparative factors as well. *See also, e.g., Bechtel, supra* note 2.

[4] *See* Byrd Exceptions at 3-13; O.B.I. Exceptions at 2-5; deHaro Exceptions at 1-3; BH Exceptions at 9-11; Greene Exceptions at 3-11.

claim of a critical evidentiary deficiency, but it counters that no record evidence casts doubt on its "integration" proposal.[5]

4. The exceptors' next line of attack challenges the fundamental validity of McFayden's purported limited partnership. The following facts are submitted in support of the charge that the partnership is not *bona fide:* (1) the application was stimulated by Carl Tutera, Jr., who suggested the consulting engineer (Tr. 358) and was active in locating a transmitting site (Tr. 359); (2) except for a $1000 contribution provided by Ms. McFayden (on suggestion of counsel, Tr. 366), Tutera is providing all of the financing for this venture with money provided by a "gift" from his father, Carl Tutera, Sr. (Tr. 387), a professional broadcaster who is concurrently seeking an FM frequency in nearby St. Augustine[6] and whose communications law firm also represents McFayden[7] ; (3) although Ms. McFayden claims a "permanent" residence in Daytona, the address listed on the partnership's Certificate to do business in Florida is that of the Carl Tuteras, Junior *and* Senior[8] ; (4) the signature card for the bank account for this partnership originally specified young Tutera's suggested "Fantastic Radio" (Tr. 360, 377-78), and two successive signature cards contain the names of Tutera, Jr. *and* McFayden, permitting both to withdraw partnership funds at will[9] ; (5) although Carl Tutera, Jr. claimed that the financing for this venture came, via his father, from his "loans" to the entity, there is no loan agreement or promissory note: Ms. McFayden testified that she "is not liable for repayment of any loans made by Tutera," and it is "McFayden's understanding that she herself is not liable to the partnership for any further financial contribution to the partnership, beyond her minimal initial $1,000 contribution..."[10] ; (6) whereas Tutera (and his father) have broadcast experience, Ms. McFayden has none and "has made no attempt to educate herself regarding the broadcast industry"[11] ; (7) her acquaintance with Tutera stems, it seems, from the fact that she was a mathematics teacher at his high school in 1982 (Tr. 354-55)[12] ; "|h|owever, at the time of her deposition, Ms. McFayden did not even know what Mr. Tutera's job was or even whether he was employed"[13] ; and (8) Ms. McFayden's enrollment in law school two years after the filing of this application evinces a pronounced disinterest in this venture,[14] as well as in broadcasting generally. In sum, it is contended by the exceptors that McFayden is a "sham" limited partnership[15] designed solely to camouflage the Tuteras and to skew its comparative profile by posing Ms. McFayden as a front.

5. McFayden replies[16] :

> The Presiding Officer correctly found McFayden Broadcasting Limited Partnership to be the best qualified applicant in this proceeding. There has been no improper "activity" by the applicant's limited partner. The general partner, Dawn F. McFayden, has made all the decisions concerning the application, and has fully participated in its prosecution. The respective roles of the principals have been in full accordance with the applicant's limited partnership business structure. Finally, there is a complete lack of record evidence to cast any doubt on Ms. McFayden's pledge to terminate her law studies if McFayden Broadcasting is awarded the construction permit. The Presiding Officer correctly found Ms. McFayden's hearing testimony entirely credible.

It further asserts that: (1) there is no evidence of active involvement by Carl Tutera, Jr. inconsistent with its limited partnership agreement[17] ; (2) the inclusion of Tutera's name on the two bank signature cards was a "mistake" occasioned by a misinterpretation of bank requirements[18] ; (3) "|i|t is equally inconsequential that Mr. Tutera, Jr.'s Florida address appears on McFayden's Application to Transact Business in Florida"[19] ; (4) the limited partnership agreement sets out the "loan agreement" between Tutera and Ms. McFayden,[20] although it concedes "Ms. McFayden testified that there is no obligation to reimburse Mr. Tutera, Jr. for these loans if McFayden Broadcasting is not awarded the Construction Permit..."[21] ; and (5) Ms. McFayden "is not obligated to finish law school," since her "enrollment in law school is an 'at will' arrangement."[22]

6. *Discussion.* Initially, we will reject the plaint that the failure of McFayden to submit its limited partnership as a record exhibit is, standing alone, grounds for holding that McFayden's "partnership" cannot be recognized as a matter of law. Whereas the exceptors correctly plead that recent case law demands strict reliance on "record" evidence, *see, e.g., Oliver Kelly and Mary Ann Kelly,* 7 FCC Rcd 4239 (1992)(interrogatory answers not part of record; local residence claim disregarded); *Woods Communications Group, Inc.,* 7 FCC Rcd 4604 (1992) (same; "integration" claim disregarded)(*on reconsideration*), we find the situation here to be sharply different.

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[5] *See generally* McFayden Reply at 10-11.H

[6] *See Public Notice,* Report No. 1843, released April 18, 1991. Tutera, Sr. "has been involved in FM radio under the name of Carl Cumo, with a station in Miami, Florida. Tr. 355-356." Greene Exceptions at 6; *see also* Tr. 355. Carl Tutera, Sr. "had gifted a sum of money to his son at some previous time." McFayden Reply at 7-8 n.2, which money is being used here to finance the application.

[7] "The law firm of Pepper & Corazinni is FCC counsel for McFayden as well as Carl Tutera, Sr., the father of McFayden's limited partner. *Scottsdale Talking Machine,* 6 FCC Rcd 1668 (ALJ 1991)." Byrd Exceptions at 7.

[8] *See* Greene Exceptions at 6 n.4. (Carl Tutera, Sr. used the same address as his son on his St. Augustine FM application).

[9] *See, e.g.,* Byrd Exceptions at 8. *See also* Tr. 371-381. This banking arrangement continued until *after* the depositions were taken in this case. O.B.I. Exceptions at 3.

[10] Greene Exceptions at 9 (citing Tr. 363).

[11] *Id.,* at 10.

[12] Byrd Exceptions at 10 (citing Tr. 354-55).

[13] *Id.,* at 10-11 (citing Tr. 387).

[14] As of the record date, Ms. McFayden was by then in her second year of law school. O.B.I. Exceptions at 4.

[15] *See* deHaro Exceptions at ii.

[16] McFayden Reply at i.

[17] *See* deHaro Exceptions at 2-4.9

[18] McFayden Reply at 4-5.

[19] *See id.,* at 5.0.

[20] *See id.,* at 8.

[21] *Id.,* at 9.

[22] *Id.,* at 10.

7. Aside from the fact that both competing counsel appearing at oral argument acknowledged that no prior case has held that the limited partnership agreement itself must be submitted as an exhibit before "integration" credit can be awarded,[23] and putting over for the nonce the fact that McFayden's limited partnership agreement was provided to all competing applicants during "normal discovery,"[24] there are several more basic reasons for rejecting this technical objection. We note, for instance, that the application form version used by all instant applicants required any party, *if* a limited partnership, to certify as to each and all of the insulative safeguards mandated by the Commission's *Ownership Attribution*, 58 RR 2d 604, 619-20 (1985)(*on reconsideration*) [25] ; McFayden so certified in response to Section II, Question 3(a) of its application.[26] It is true, as certain exceptors posit, that in cases such as *Eugene Walton*, 7 FCC Rcd 3237 (Rev. Bd. 1992), the Board has responded to exceptions claiming that a limited partnership agreement, formally placed in the record, lacked particular insultative clauses required by *Ownership Attribution*, and (extrapolated) "integration" credit was there denied.[27] No such claim is raised here. Finally, we observe that it was not until just recently -- and long after these instant applicants filed -- that the Commission adopted a rule to *require* applicants to produce at discovery "all formation and organizational documents, including ... partnership agreements... ." *Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases*, 6 FCC Rcd 157, 160 (1990). Prior thereto, the actual agreement was not uniformly required, even at discovery.[28] In view of all of the foregoing, we will not sandbag McFayden and deny "integration" on this technical basis. Notwithstanding, and for the substantive reasons next discussed, we decline to affirm the *I.D.'s* award of "integration" credit to McFayden.

8. In *Coast TV*, 4 FCC Rcd 1786, 1787 (1989), the Commission stated:

> |S|ometimes an applicant may present a favorable formal structure on paper in order to gain a quantitative integration preference, but in reality that structure is not an accurate depiction of how the licensee's affairs will be managed. Thus, limited partners or non-voting stockholders, although nominally without influence over the applicant, may actually participate in or control the applicant's decision-making process. In those instances, the Commission disregards the applicant's formal ownership structure and treats the nominally passive owners (that is, non-voting shareholders or limited partners), as if they were active in the management of the applicant -- and thus relevant to the Commission's integration analysis. *See, e.g.* , *Signal Ministries, Inc.*, 104 FCC 2d 1481, 1494-97 paras. 15-16 (Rev. Bd. 1986), *review denied*, 2 FCC Rcd 1259, 1259 para. 2 (1987), *aff'd by judgment sub nom. Adelphi Broadcasting Corp. v. FCC*, 838 F. 2d 571 (D.C. Cir. 1988); *KIST Corp.*, 102 FCC 2d 288, 292 (1985), *aff'd per curiam sub nom. United American Telecasters, Inc. v. FCC*, 801 F.2d 1436 (D.C. Cir. 1986), *cert. denied*, 107 S. Ct. 2182 (1987); *Henderson Broadcasting Co.*, 63 FCC 2d 419, 424-26 paras. 10-13 (Rev. Bd. 1977). *See also Cleveland Television Corp. v. FCC*, 732 F.2d 962, 969 (D.C. Cir. 1984). "|W|here there is a basis in the record for inferring that non-voting shareholders will exercise influence or control of an ongoing business," an applicant's integration proposal will be discredited. *Victory Media*, 3 FCC Rcd 2073, 2074 para. 18 (1988).

9. No less an authority than the Supreme Court has declared:

> The FCC's Review Board, in supervising the comparative hearing process, seeks to detect sham integration credits claimed by all applicants, including

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[23] *See* Tr. of Oral Arg. at 1103 (Byrd Counsel); *id.* , at 1121-22 (Greene counsel). *Mirabile dictu*, counsel for Greene, which purports to be a Florida limited partnership and whose exceptions (at 4-5) argue this very point against McFayden, was compelled to concede that "Greene also did not put its |limited| partnership" on the hearing record, but relied instead on its "integration" statement. Tr. of Oral Arg. at 1138.

[24] *See* Tr. of Oral Arg. at 1149 (McFayden Counsel). *Mirabile dictu*, counsel for Byrd, whose exceptions (at 4-5) argue this very point against McFayden, simultaneously argues that *one* of the insulative provisions in McFayden's limited partnership agreement (stating that Tutera would not "transact any business on behalf of the Partnership") is too "vague" to contractually forefend Tutera's control. Byrd Exceptions at 5.

[25] The instructions to Section II of the October 1986 version of the application form (FCC Form 301) used by the instant applicants specified, *in haec verba* and *in extensio*, the insulative provisions required under *Ownership Attribution*. Counsel for Greene recited these application provisions in full, *see* Tr. of Oral Arg. at 1126-29.

[26] *See* McFayden Application Form 301, Section II at p.2, filed September 15, 1988 and *compare* McFayden Exh. 1, filed December 5, 1990. The Board recognizes, as Byrd counsel argued (Tr. 1104), that certain previous cases have suggested that an applicant's FCC Form 301 is not part of the "record" in a comparative proceeding and that official notice of application answers is not appropriate where the substance of an answer has not been tried directly at hearing. *Compare Voce Intersectario Verdad America, Inc.*, 100 FCC 2d 1607, 1615 n.6 (Rev. Bd. 1985)(majority decision) *with Dissenting Statement, id.* , at 1618-19 n.2. However, there is no dispute that the Board has consulted an applicant's Form 301 to determine whether hearing evidence is at *variance* from the application. *Sarasota-Charlotte Broadcasting Corp. v. FCC*, No. 91-1186, Slip Op. (D.C. Cir. Oct. 27, 1982)(comparing hearing evidence with application, but reversing Comm'n on question of "variance"). *See also Leflore Dixie, Inc.*, 57 RR 2d 1155, 1157-59 (Rev. Bd. 1985)(hearing evidence compared with application answer; no "variance" discerned). Nothing in McFayden's record evidence is at variance with its application, and no exceptor so claims.

[27] *See also Evergreen Broadcasting Co.* , 6 FCC Rcd 5599, 5600 (1991). In both *Evergreen* and *Walton*, late requests to submit *amended* limited partnership agreements were denied. It is reported that McFayden sought to introduce its agreement as a reply pleading attachment, but the ALJ rebuffed this gesture. Greene Exceptions at 4 n.2 (citing *Order*, FCC 91M-1691, released May 22, 1991). No party here argues, however, that the proffered McFayden agreement varied one iota from that exchanged during discovery.

[28] As Byrd counsel acknowledged at oral argument (*see* Tr. 1112-13), some ALJs required partnership agreements to be produced, and some did not, prior to the adoption of new standardized discovery rules in December 1990.

minorities. *See, e.g., Silver Springs Communications*, 5 FCC Rcd 469, 479 (1990); *Metroplex Communications, Inc.*, 4 FCC Rcd 4189, 8149-8150, 8159-8160 (1989); *Northampton Media Associates*, 3 FCC Rcd 5164, 5170-5171 (Rev. Bd. 1988); *Washoe Shoshone Broadcasting*, 3 FCC Rcd 3948, 3955 (Rev. Bd. 1988); *Susan Mulkey*, 3 FCC Rcd 590, 590-593 (Rev. Bd. 1988), *modified*, 4 FCC Rcd 5520, 5520-5521 (1989); *Newton Television Limited*, 3 FCC Rcd 553, 558-559, n.2 (Rev. Bd. 1988); *Magdelene Gunden Partnership*, 3 FCC Rcd 488, 488-489 (Rev. Bd. 1988); *Tulsa Broadcasting Group*, 2 FCC Rcd 6124, 6129-6130 (Rev. Bd. 1987); *Pacific Television, Ltd.* , 2 FCC Rcd 1101, 1102-1104 (Rev. Bd. 1987); *review denied*, 3 FCC Rcd 1700 (1988); *Payne Communications, Inc.*, 1 FCC Rcd 1052, 1054-1057 (Rev. Bd. 1986); *N.E.O. Broadcasting Co.*, 103 FCC 2d 1031, 1033 (Rev. Bd. 1986); *Hispanic Owners, Inc.*, 99 FCC 2d 1180, 1190-1191 (Rev. Bd. 1985); *KIST Corp.*, 99 FCC 2d 173, 186-190 (Rev. Bd. 1984), *aff'd as modified*, 102 FCC 2d 288, 292-293, and n.11 (1985), *aff'd sub nom. United American Telecasters, Inc. v. FCC*, 255 U.S. App. D.C. 379, 801 F.2d 1436 (1986).

Metro Broadcasting, Inc. v. FCC, 110 S. Ct. 2997, 3025 n.48 (1990).

10. The District of Columbia Circuit has echoed:

> The Commission must "'identify and eliminate from participation' those applicants who are not *bona fide*." *Metro Broadcasting, Inc. v. FCC*, 110 S. Ct. 2997, 3025 n.48 (1990)(quoting *Fullilove v. Klutznick*, 448 U.S. 448, 487-88 (1980)). The Commission sometimes dismisses applications as sham for integration purposes when it appears that passive or limited partners would actually control the day-to-day operations of a proposed broadcast station. *See, e.g., Royce Int'l Broadcasting*, 5 FCCR 7063 (1990), *recon sideration denied*, 6 FCCR 2601 (1991) (all integration credit denied where limited partner actively participated in partnership affairs and in fact dominated partnership activities); *Doylan Forney*, 5 FCCR 5423, 5424-25 (1990) (defective integration proposal where limited partners could dissolve partnership or sell partnership assets without concurrence of general partners); *Mableton Broadcasting Co., Inc.*, 5 FCCR 6314, 6315-18 (Rev. Bd. 1990) (all integration credit denied where limited partners chose unknown black female with no broadcast experience to be general partner seventy-two hours before application deadline and after several other potential general partners had declined).

Marlin Broadcasting of Central Florida, Inc., 952 F.2d 507, 511 (D.C. Cir. 1992).

11. *Eo intuitu*, the Board has striven to keep faith with the courts, for as we just recalled in *Lowrey Communications, L.P.*:

> The Commission realized, early on, that recognizing for its licensing purposes these two-tiered ownership structures held a great potential for mischief, and it declared "that in order to avoid *'sham'* arrangements, we will continue to review such agreements to ensure that complete managerial control is reposed" in the purportedly "active" principals. *Minority Ownership in Broadcasting*, 92 FCC 2d 849, 855 (1982)(emphasis added). The mischief was not long in coming. *See KIST Corp.*, 99 FCC 2d 173 (Rev. Bd. 1984), *modified* 102 FCC 2d 288 (1985), *aff'd per judgment sub nom. United American Telecasters v. FCC*, 801 F.2d 1436 (D.C. Cir. 1986)(Table), *cert. denied*, 481 U.S. 1050 (1987), perhaps the first in a seemingly endless string of such charades. *See, e.g., Metroplex Communications, Inc.*, 4 FCC 2d 8149, 8159 (Rev. Bd. 1989)(and cases cited therein), *modified*, 5 FCC Rcd 5610 (1990), *aff'd by judgment sub nom. Southeast Florida Ltd. Partnership v. FCC*, 947 F.2d 505 (D.C. Cir. 1991).

FCC 92R-83, released November 2, 1992, at 11 n.56. *See also Evansville Skywave, Inc.*, 6 FCC Rcd 5373 (Rev. Bd. 1991)[29] ; *Carta Corp.*, 5 FCC Rcd 3696 (Rev. Bd. 1990), *review denied sub nom. Fresno FM Limited Partnership*, 6 FCC Rcd 6998 (1991), *recon. denied*, 7 FCC Rcd 4339 (1992); *Poughkeepsie Broadcasting Limited*, 5 FCC Rcd 3374 (Rev. Bd. 1990), *review denied*, 6 FCC Rcd 2497 (1991), *recon. dismissed*, 7 FCC Rcd 658 (1992).

12. On the facts at bar, we can perceive no principled basis upon which to hold that McFayden is any more entitled to "integration" credit on the strength of its purported limited partnership than the host of applicants denied such credit in the cases cited in the four preceding paragraphs. In *Evergreen Broadcasting, supra* note 27, the Commission attempted to summarize its mode of analysis for assaying the "reliability" of two-tiered ownership structures. *See* 6 FCC Rcd at 5600-03. Applying *Evergreen*, the record before us provides no scrutable justification, for example, for the use of the Tuteras' home address for the Delaware partnership (particularly when Ms. McFayden claims a "permanent" address in proposed service area), or why Carl Tutera, Jr.'s name appears as a co-signatory on the partnership's bank signature cards, after Ms. McFayden allegedly assumed exclusive control over the partnership.[30]

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[29] In its review of that decision, the Commission declined to determine whether that applicant was a "sham," but it stated that "in view of the ambiguity and potential for confusion connected with the word 'sham', its use should be avoided." *Evansville Skywave, Inc.*, 7 FCC Rcd 1699, 1700 (1992)(reversing Board affirmation of ALJ determination of misrepresentation). But a later case reaffirmed the agency's concern with such applicants. *R.J. Winter, Inc.*, 7 FCC Rcd 2235, 2236 (1992)(referencing the Commission's "ongoing efforts to discourage the filing of sham or abusive applicatons").

[30] The bank's signature card itself expressly provided that only "one" signatory was required. Tr. 373. In *Isis Broadcast Group*, 7 FCC Rcd 5125, 5130-33 (Rev. Bd. 1992), the Board cited a number of recent Commission cases in which "integration" credit was denied because a party (or parties) other than the putative controlling principal(s) maintained dominion over the finances, including *Evergreen* where the "passive" investors went so far as to appoint an escrow agent to hold the financing (*see* 6 FCC Rcd at 5607 n.24).

13. But above and beyond these rather telling fingerprints of Carl Tutera, Jr.'s active hand, the totality of record evidence does not auger well for the prospect that Ms. McFayden will be the sole controlling principal of this entity. As in aforecited cases such as *Metroplex, Poughkeepsie Communications, Mableton Broadcasting, Evansville Skywave* and *Fresno FM*, we are faced with the now banal tableau of a cohort of broadcast entrepreneurs[31] recruiting, for a token payment made solely at the suggestion of counsel "[t]o show some sort of commitment to it,"[32] a random neophyte and ceding away a 20% equity share along with purportedly *exclusive* control. This is unreal, particularly when nothing on the record explains why *both* or *either* of the Tuteras cannot or would not be actively involved with this new FM facility.[33] And, as in *Fresno FM* (and other cases of this genre), the sole alleged "general" partner claimed her liability for the applicant was "limited" to her $1000 contribution, an inversion of the ordinary limited partnership *regula*. [34] Next, the alleged "loans" to her are not loans at all, since McFayden insisted numerous times that she had no obligation to repay the Tuteras.[35] Further, she conceded that she was "not really familiar" with various sections of the McFayden application. Tr. 394. Nor, as in the above-cited cases, is there record evidence that McFayden ever truly negotiated her share or her role in this seaside venture.

14. In *Royce Int'l*, the Commission indicated a glaring condition under which it would not award "integration" credit:

> For example, the applicant may have been formed in a manner that is irreconcilable with the exercise of sound business judgment. That is, it may appear that the individuals organizing the applicant are giving away control or ownership in a manner that is patently unreasonable if taken at face value. *See Metroplex Communications, Inc.*, 5 FCC Rcd 5610 (1990). *Cf. KIST Corp.* , 102 FCC 2d 288, 292 para. 8, 292-93 n.11 (1985) (where it appeared unbelievable, under the circumstances, that an investor would give away control of the broadcast applicant to an individual who would make no investment).

5 FCC Rcd at 7065 n.10. Synthesizing in *Lowrey Communications, L.P.*, we adumbrated the four prime indicia of applicants whose structure should not be, to quote *Royce Int'l*, "taken at face value":

> In what were formerly termed "sham" cases ... the prototypical format included (1) allegedly "passive investors" owning the lion's share of equity who used their own lawyers, engineers, *etc.* , combined with (2) an unfamiliar recruit who, for no discernable consideration, was handed a token equity share (anywhere from 4% to 25%) to pose as the *sole* controlling voting shareholder or solitary "general" partner. The only conceivable purpose of such inherently incredible constructs was to (3) exaggerate the qualitative comparative attributes of the frontperson, while (4) shielding the allegedly "passive" owners from any comparative disadvantages, including other media interests, distant residences, as well as race and gender. *See Fresno FM Ltd. Partnership*, 6 FCC Rcd 6998 (1991)(and prototypical "sham" cases cited at para. 6 therein)(subsequent history omitted).

FCC 92R-83 at n.58 (original emphasis). Finding McFayden to be on "all fours" and to "involve 'strange and unnatural' business arrangements," *Bechtel*, 957 F.2d at 880 (internal citation omitted), that mark the dubious two-tiered ownership structure,[36] we yield to the grievances of each and every exceptor in this case that McFayden is not a *bona fide* partership and reverse the *I.D.* on this point.

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[31] While Carl Tutera, Sr., an a experienced broadcaster, is said to be providing the money for this venture through his namesake and is currently seeking an FM broadcast frequency in nearby St. Augustine, we need not here determine whether a real-party-in-interest issue might be warranted against him. *See, e.g.*, deHaro Exceptions at 2; *cf.* Greene Exceptions at 11 n.9.

[32] Tr. 366 (quoting McFayden deposition).

[33] At the time of her deposition, Ms. McFayden did not know what Carl Tutera, Jr. did for a living or whether he was even employed, Tr. 387, but at hearing she stated that "[a]t the moment he is selling clothes." Tr. 391.

[34] In *Minority Ownership, supra*, the Commission explained:

> Essentially, a limited partnership is a business enterprise composed of: (1) one or more general partners who exercise complete managerial control over the business' affairs *and who are personally liable for the partnership debts;* and (2) one or more limited partners who invest capital and share in the profits, but do not exercise any managerial control and do not incur any personal debts beyond their initial capital contribution.

92 FCC 2d at 854 (emphasis added). At the FCC, and in most of the "sham" cases cited by the courts, we experience these curious business role reversals in which those with experience *and* finances enlist an inexperienced *and* impecunious individual as their putative "controlling" principal. The intent of these upside-down constructs is manifest.

[35] *See, e.g.*, Tr. 361, 363-64, 366, 382. Because we find McFayden to be out of the running, we need not delve very deeply into the basic finances of this applicant. Suffice it to note that while it was Ms. McFayden's "understanding" that the money for this entity was to be furnished by Carl Tutera, Sr., Tr. 387, she could not even explain why a notation on the bank's signature card indicated "Not on U.S. check" as to the money used to open "her" partnership account. Tr. 376-77. Moreover, so apparently uncertain was Ms. McFayden with the financing of this venture that, if Tutera could not supply the funds necessary to construct this station, she said she would rely on her parents, though she had never objectively elicited their financial ability to support the project. Tr. 365.

[36] McFayden suggests that "her services to the full prosecution of the McFayden application" is the valuable consideration she has provided for her equity share and controlling status. McFayden Reply at 9. But this same argument was made, and rejected, in every case cited in paragraph 13 of this text. *Compare, e.g., Independent Masters, Ltd.* , 104 FCC 2d 178, 185-194 (Rev. Bd. 1986) (though inviting Comm'n review, Board accepts "integration" claim of applicant where (1) 60% of equity was in fact owned by racial minority principals and (2) "general" partner, Chairman of Howard University's Radio and Television Dept. who supervised WHMM-TV (Ch. 32) and had distinguished broadcast career elsewhere (including CPB), promised to "integrate" full time "as a loose form of *quid pro quo* " for his 10% equity share). Yet as in *Metroplex*, we discern no comparable *quid pro quo* here in return for "giving away the store." *See* 5 FCC Rcd at 5612.

GREENE COMMUNICATIONS, LTD.

15. Greene is depicted as a Florida limited partnership, which reports its ownership as follows: (1) Elaine W. Greene, the "general" partner said to hold a 51% equity interest; and (2) ten "limited" partners whose individual equity interests range from 2.45% to 9.19%. *I.D.* , para. 86. Ms. Greene, who acquired a Daytona address only a month before the filing of this application, *id.* , para. 89, proposes full-time management of this facility. The *I.D.* awarded her a 100% integration" credit, along with various qualitative enhancements. *Id.*, paras. 112-114.

16. *Exceptions.* The exceptors levy two lines of argument against the "integration" credit awarded to Greene: First it is asserted[37] :

> Capital Radio's involvement in the preparation and prosecution of Greene's application combined with Greene's interest in Sable Communications makes her integration proposal inherently not credible. Greene is a creature spawned by Capital Radio, an alleged "application mill" which provided turnkey application services to Greene and numerous other applicants before the Commission. Capital Radio's active involvement in selecting Greene's attorneys and engineers and soliciting Green to apply for the construction permit raise substantial doubts as to whether Greene's integration proposal is credible.

Second, it is submitted[38] :

> Greene maintains a residence in Fairburn, Georgia which is in the Atlanta, Georgia metropolitan area. Greene spent only 25 percent of her time in the Ormond Beach areas since August, 1988, when she first moved to the area. (Tr. 1092-1094). Greene owns 75 percent of Sable Communications or Georgia. She actively managed the company until the end of 1988 and does not propose to divest herself of the company. (Tr. 1082).

Greene rejoins that there is "[n]o evidence of either pre-filing control or post-filing activity of *any* sort" on this record with respect to Capital Radio Services, Inc.[39] While conceding that "Elaine Greene is President and 75% owner of Sable Communications of Georgia, a corporation specializing in video advertising," and that "Elaine Greene has no plans to divest herself of her ownership interest in Sable," Greene maintains that "[d]ivestiture of all ownership interests in other businesses is not required in order to receive full integration credit."[40]

17. *Discussion.* In *Lowrey Communications, L.P.*, a companion case to the instant with respect to the activities of Capital Radio Services, Inc., the Board examined in minute detail the *modus operandi* of Capital and it concluded that nothing done there would portend control over the applicant once a licensee. More specifically, we found that -- as here -- the applicant principals provided a considerable amount of money to Capital for application spadework, but that Capital did not come close to meeting the test for being considered a real-party-in-interest because it retained virtually nothing except the money of the applicant principals. *See* FCC 92R-83, *supra*, at paras. 31-36. We likewise affirmed the ALJ's conclusion that the *Lowrey* applicant was not "sham"; unlike McFayden is this case, for instance, there was in *Lowrey* no spectre of allegedly "passive" principals providing all of the financing and then, to use the Commission's *Metroplex* phrase, "giving away the store" to a novice recruit so as to distort the applicant's comparative profile while shielding the allegedly "passive" principals (inevitably white males) from their comparative handicaps, *e.g.*, race, gender,[41] media interests, residency, *etc. See* FCC 92R-83, *supra*, at paras. 37-43. The exceptions before us, nowhere nearly as comprehensive as those in *Lowrey*, establish no greater basis upon which to deny Greene "integration" credit simply because of its use of Capital Radio Services. We incorporate by reference our extended discussion in *Lowrey* and reject the exceptions relating to the role of Capital. For the reasons set out below, however, we decline to affirm the *I.D.*'s award of full-time "integration" credit to Greene.

18. In *Naguabo Broadcasting Co.*, 6 FCC Rcd 4879, 4880 (1991),[42] the Commission denied "integration" credit to an applicant who proposed to retain ownership in another significant business interest because that applicant "ha[d] not set forth a specific credible plan for accommodating these outside interests with his plan for full-time integration." It stated (*id*):

> Such a showing is necessary because the "very existence" of outside interests renders an applicant's commitment questionable. *Blancett Broadcasting Co.*, 17 FCC 2d 227, 230 para. 7 (Rev. Bd. 1969).

For lack of "a *detailed* accounting of duties and time" currently spent on an existing business and a "*specific credible*" plan for accommodating an outside business interest proposed to be retained, 6 FCC Rcd at 4880 (emphasis added), the *Naguabo* Commission refused "integration" credit by applying the venerable principle of *Blancett*, the premier Board case dealing with outside business interests under the (then) fresh 1965 *Policy Statement.*[43]

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[37] O.B.I. Exceptions at 7-8; *see also* deHaro Exceptions at 10-11; BH Exceptions at 11-12.

[38] O.B.I. Exceptions at 7.

[39] Green Reply at 10 (original emphasis).

[40] *Id.*

[41] At the time the instant applications were filed, the court had not handed down *Lamprecht v. FCC*, 958 F.2d 382 (D.C. Cir. 1992), pronouncing the FCC's gender preference unconstitutional. Apart from gender, all individuals other than males of European descent (save Spaniards) are entitled to a broadcast licensing preference. *See generally Metroplex Broadcasting, Inc. v. FCC*, 110 S. Ct. at 3002-03 n.1.

[42] *Modified on the other grounds upon reconsideration*, 7 FCC Rcd 1696 (1992).

[43] Indeed, in *Blancett* the Board refused to award even a 25% *part-time* credit to principals with outside business interests, even though that Board acknowledged the "probability" that those principals could rearrange their schedules so as to help manage the proposed station. *See* 17 FCC 2d at 230.

19. On the record before us, and although Ms. Greene pledged to terminate a formal wear outlet she operates in Atlanta, Georgia, Greene Exh. 1 at 3-4,[44] she expressly declined to divest her 75% ownership interest in Sable Communications, a business she started in 1984 (or 1985), or to resign as its president. Tr. 1082. Whereas her pleadings assert that "Ms. Greene timely and unequivocally stated in her Hearing Exhibits, as well as her Integration Statement, that she would resign *all* current employment activities to devote herself full-time to her duties at the proposed FM station,"[45] her record pledge is actually quite different and hardly "unequivocal," to wit:

> I will resign from all current employment activities and will *curtail* all other activities *to the extent necessary* to avoid any conflict with my responsibilities and duties at the station.

Greene Exh. 1 at 3 (emphasis added). With more precise respect to Sable, she declared (*id.* , at 4-5; emphasis added):

> Since 1989, I have substantially reduced my role in Sable. In the event of a grant of a station license to the Partnership, I will *curtail* all activities on its behalf *to the extent necessary* to work full-time at the proposed station, including resignation as President should that become necessary.

No "detailed account" of her present Sable function appears on the record, nor does any more "specific" a plan of disengagement occur herein.

20. When an applicant proposes only to disengage from a current business interest "to the extent necessary" to fulfil a broadcast "integration" pledge, credit has been categorically denied. *Naguabo , supra; Leininger-Geddes Partnership*, 2 FCC Rcd 3199 (Rev. Bd. 1987)(and cases cited in para. 3 thereof), *review denied*, 3 FCC Rcd 1181 (1988); *Ft. Collins Telecasters*, 103 FCC 2d 978, 785-87 (Rev. Bd. 1986), *review denied*, 2 FCC Rcd 1780 (1987). The reason for dismissing a pledge so diaphanous is plain: it is the ineluctable nature of commercial enterprise that nobody can foretell, especially several years in advance, how much time, energy or money will be "necessary" for a particular business activity, whether the future be "eureka!" or bankruptcy.[46] Hence the rational principle of *Blancett* that it is "the *'very existence'* of outside interests [that] renders an applicant's ["integration"] commitment questionable." *Naguabo*, 6 FCC Rcd at 4880 (emphasis added), and why a broad pledge to "curtail" or "diminish" participation in an ongoing business is thoroughly inadequate. In *Naguabo*, the Commission affirmed that[47] :

> the Board's routine practice is to find that generalized promises to "diminish" the time spent on a significant business interest is insufficient. *Leininger-Geddes Partnership*, 2 FCC Rcd 3199 (Rev. Bd. 1987), *review denied* 3 FCC Rcd 1181 (1988); *Ft. Collins Telecasters*, 103 FCC 2d 978, 985-86 (Rev. Bd. 1986), *review denied*, 2 FCC Rcd 1780 (1987). In that regard, a blanket pledge to hire more employees and diminish hours spent is not enough; we have no way to check afterwards, and were we to accept such a promise where significant business interests remain, all comers would receive full-time credit.

21. Too often in the past, the Commission (and the courts) have been burned badly by an applicant with another business pledging full-time "integration" at a new station. *See, e.g., Central Texas Broadcasting Co., Ltd.* , 90 FCC 2d 583 (Rev. Bd. 1982),[48] where shortly after judicial affirmation of an award to a banker who swore minimum current and future devotion to hisp0retained interest,[49] the banker sold the broadcast facility (at a multimillion-dollar profit) because, as reported, he "was on 'two career paths,' and the broadcast business took more time than he had to devote to it." *See Central Texas Broadcasting Co., Limited*, ASSIGNOR, 64 RR 2d 332, 333 (M.Med. Bur. 1987). This abandoment pattern seems unabated, *compare Kevin Potter*, 7 FCC Rcd 4342 (1992)(awarding "integration" credit to applicant with distant business interests) *with Order*, 92I-065 (OGC July 20, 1992) (same applicant abandons "integration" pledge upon settlement),[50] as the *Bechtel* court recently so emphasized. *See* 957 F.2d at 880. Considering the record evidence on Ms. Greene's intentions with regard to Sable Communications, the precedent demands no more credit than in any other case in which an applicant pledged merely to "curtail" devotion to an extant business "to the extent necessary" to fulfil an "integration" proposal. *See, e.g., Pleasure Island Broadcasting, Inc.*, 6 FCC Rcd 4163, 4165 (Rev. Bd. 1991)(and cased cited in para. 14 thereof).[51] We award Greene no "integration" credit for

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[44] *See also* Tr. 1074-75, 1081, 1095-96.

[45] Greene Reply at 10 (original emphasis). That pleading also asserts that she had diminished her management duties at Sable as of August 1988, and has otherwise demonstrated an "ongoing spirit of disengagement" at Sable. *See i d.* , at 10-11.

[46] In fact, Ms. Greene testified that she "did very well with Sable Communications of Georgia," Tr. 1087; and at the time of filing this application "Sable Communications was doing a lot of businesses in Georgia," Tr. 1092, and spending so much money on hotels that Ms. Greene seriously contemplated buying "a condo in Georgia." Tr. 1093. While Ms. Greene, with some apparent inconsistency, said Sable was at the same time "getting to the point" where it did not require as much personal time, Tr. 1087, we note that she purposedly declined to relinquish her corporate presidency. *See* Tr. 1091; Grene Exh. 1 at 4-5. Clearly she intends to remain the "top manager" of Sable, legally responsible for its corporate well-being, and this scarely comports with the "ongoing spirit of disengagement" that her pleading asserts.

[47] *Naguabo Broadcasting Co.* , 6 FCC Rcd 912, 924 n.63 (Rev. Bd. 1991).

[48] *Recon. denied*, 92 FCC 2d 914 (Rev. Bd. 1982), *review denied*, FCC 83-415, released September 21, 1983.

[49] *Blake-Potash Corp. v. FCC*, No. 83-2112 (D.C. Cir. April 26, 1985) (aff'g *Central Texas* per judgment with memorandum).

[50] Inasmuch as Potter's discard of his sworn "integration" pledge appears to have been before the Commission at the time it awarded him "integration" credit, it is perhaps inaccurate to say that the Commission was there "burned." *Compare Order* (settlement agreement abandoning "integration" pledge filed by the parties on May 22, 1992) *with Potter* (decision nonetheless awarding full "integration" credit adopted June 25, 1992).

[51] The Board is confident that in cases such as *Potter; Kennelwood Broadcasting Co.* , 7 FCC Rcd 520 (1992), *recon. denied*, 7 FCC 4580 (1992); and *Fresno FM Limited Partnership*, 6 FCC Rcd 6998, 6999-7000 (1991), *recon. denied*, 7 FCC Rcd 4339 (1992), the Commission had no intention of vitiating the *Blan-*

failure to meet her burden of proof on this aspect of the comparative issue. *See Woods Communications Group, Inc.* , 7 FCC Rcd 78, 79-81 (1992) (teacher fails to meet "integration" burden where hearing record does not reflect pledge to resign job, despite interrogatory answers to that effect), *recon. denied*, 7 FCC Rcd 4604 (1992).

GLORIA BELL BYRD

22. Ms. Byrd is reported as an individual applicant; she has resided in Ormond Beach (contiguous to Ormond-By-The-Sea) since 1952 (with the exception of the years 1958-1963), has been engaged in local civic activities, and has no other media interests. *See I.D.* , paras. 4-12. Because the ALJ accepted her proposal to serve full-time as her facility's general manager, she was awarded 100% "integration" credit, with enhancements. *See id.*, paras. 96-97.[52]

23. *Exceptions.* Several exceptors challenge the award of "integration" credit for Byrd.[53] They contend that: (1) Ms. Byrd learned of this frequency from a friend of her husband's, Dallas Tarkenton, who in turn recommended Byrd's consulting engineer, Larry Fuss (Tr. 39-41), who in turn "choose the law firm"[54] ; (2) Ms. Byrd consulted with her husband and her father, a hotel owner who has furnished some of the funds to prosecute this application (Tr. 62); and (3) Fuss had not presented a bill for his engineering services prior to hearing designation (Tr. 55-57).

24. Byrd rejoins "that there is no real-party-in-interest against Ms. Byrd, nor was one sought."[55] She further maintains that she has no conflicting business commitments, that she "relies upon her own funds to meet her estimated costs,"[56] that "[s]he personally wrote checks on her own account, containing her own funds, to pay all her bills in connection with the preparation and prosecution of the application, with the exception of some incidental expenses (Tr. 59-61, 73-74),"[57] and that no evidence suggests that Fuss or her husband have controlled the application or would control the station. Citing *High Sierra Broadcasting, Inc.*, 96 FCC 2d 423 (Rev. Bd. 1983), *review denied*, 56 RR 2d 1394 (1984), Byrd asserts that the law holds that marginal assistance of family members in the prosecution of an application is, standing alone, unexceptional and no cause to question "integration" credit.[58]

25. *Discussion. H.S. Communications, Inc.*, 7 FCC Rcd 6448 (Rev. Bd. 1992), contains a comprehensive discussion of the circumstances under which we will find that a wife and/or daughter is a "front" for some other party. Applying settled precedent, the Board there found that one applicant was not entitled to "integration" credit where her husband actively performed every critical function while his wife was totally ignorant of nearly all facets of the application, *see id.* , at 6449-52, whereas it found no such evidence with respect to another applicant that relied on her husband and her father for only tangential support. *See id.* , at 6454-58. On the record before us, it is evident why not one of the many parties to this case sought a real-party-in-interest issue against Byrd: no evidence adduced would support such an issue.

26. In *H.S. Communications*, we rehearsed:

> The legal test for determining a real-party-in-interest is whether someone other than the applicant has an ownership interest or is or will be in a position to control the operation of the proposed station. *See Sound Broadcasting Co.*, 6 FCC Rcd 6903, 6903 para. 4 (1991). When family members are involved, somewhat greater proof is needed to add the issue, because certain natural relationships are presumed among family members that may not suggest an unspoken interest in the applicant. *See Sound Broadcasting Co.* , 6 FCC Rcd 3626, 3628 para. 12 (Rev. Bd.), *aff'd*, 6 FCC Rcd 6903 (1991), citing *High Sierra Broadcasting, Co., Inc.*, 96 FCC 2d 423, 435 (Rev. Bd. 1983) (subsequent history omitted).

7 FCC Rcd at 6455. We further noted, by way of example, that (*id*):

> in *Sound*, the applicant's husband directed an engineer to "'file the ... application in my wife's name'" and handled virtually all application-related matters other than writing checks, some of which were written on an account owned by the family business and some of the joint account. The applicant and her husband had a history of shared broadcast interests.

Compare also *Rayne Broadcasting Co., Inc.*, 5 FCC Rcd 3350 (Rev. Bd. 1990) (real-party-in-interest issues added where evidence showed active and continuing role of various relatives); *Richard P. Bott, II*, 4 FCC Rcd 4924, 4928-30 (Rev. Bd. 1989) (real-party-in-interest issue warranted where husband and wife had joint broadcast history and husband hyperactive in pending application), *review denied*, 5 FCC Rcd 2508 (1990)(subsequent history omitted). Like Byrd's own competitors, we find no record basis for speculating that she shields an unnamed principal who will hold a proprietary interest, or the functional equivalent thereof, in this facility.

27. Nor do we find, as was the case with the discredited applicant in *H.S. Communications*, an ignorance of the application and proposed station duties so profound as to deduce that Byrd has had, and will have, no meaningful role in this venture. *Compare N.E.O. Broadcasting Co.*, 103

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cett principle. Its reasons for awarding credit in each of those cases are available upon a reading. (The Board Chairman concurs in this result without relying on *Central Texas, supra*, for the reasons set out in his dissenting statement in *Anchor Broadcasting L.P.*, 5 FCC Rcd 2432, 2444 (Rev. Bd. 1990)(subsequent history omitted)).

[52] The ALJ notes that Byrd failed to list certain civic activities on her Integration Statement, "disclosing them for the first time in her direct written case." *I.D.* at n.5. He struck these latter activities from the record. Byrd does not except to this ruling, and the matter is moot.

[53] *See* O.B.I. Exceptions at 5-6; deHaro Exceptions at 5-6; BH Exceptions at 5-6. Greene does not challenge Byrd's basic "integration" credit; she argues only that Byrd's credit was overweighed relative to her own (a matter now also moot). *See* Greene Exceptions at 13-17.

[54] O.B.I. Exceptions at 5 (citing Tr. 49).

[55] Byrd Reply at 1-2.

[56] *Id.*, at 2.

[57] *Id.*, at 2-3.

[58] *Id.*, at 3-5.

FCC 2d 1031 (Rev. Bd. 1986) (wife, named 100% owner at 11th hour, utterly inert; broadcaster-husband was moving force), *review denied*, 1 FCC Rcd 380 (1986); *Royce Int'l, supra* (sister revealed as front for broadcaster brother). As illustrated by the case law, the Board is under no illusion that, prior to *Lamprecht*, [59] many applicants did not disingenuously project a female ownership to defraud the Commission. But particularly in this day and age,[60] we will not discredit an "integration" proposal without solid evidence that a female applicant is but a shill for peripheral men, just as we here found with respect to McFayden. *See also Atlantic City Community Broadcasting, Inc.*, 6 FCC Rcd 925, 932-34 (Rev. Bd. 1991) (alleged "partner" totally ignorant of application and without true management role). By contrast, the exceptions against Byrd are relatively weak. We are constrained by the facts and by precedent to affirm the *I.D.* in its credit of Byrd, finding no greater involvement of family members than in *High Sierra* or the more recent *H.S. Communications. See generally also Stephen D. Tarkenton*, 7 FCC Rcd 5973, 5973-74 n.6 (1992) (family relationships, even if involving some financial and other assistance, "not uncommon, and, given the familial relationship, does not without more support a conclusion that a real-party-in-interest issue exists").[61]

OTHER APPLICANTS

28. Having not overturned the *I.D.* in its award of 100% "integration" credit to Byrd, the internecine exceptions of the applicants ranked below Byrd in the final comparative reckoning become nondecisional and need not be resolved. *See Colonial Communications, Inc.*, 6 FCC Rcd 2296 (1991) ("An agency, like a court, need not decide questions which are not relevant to its decision").[62] Thus, O.B.I. cannot compete with Byrd because its "active" principal has no past local residence or local civic activities. *I.D.*, paras. 14-15.[63] The same is true of BH Broadcasting. *Id.*, paras. 44, 47. And deHaro is charged with an attributable broadcast station in Daytona Beach, which its controlling principal does not propose to divest. *Id.*, paras. 19, 22.[64] Nor does deHaro seek "integration" credit.[65] Withal, we agree with the *I.D.* in placing these three remaining applicants out of the comparative running. *See I.D.*, paras. 117-118.

CONCLUSION

29. All of the decisional exceptions having been considered, we are left with Gloria Bell Byrd as that applicant entitled to the greatest credit under the 1965 *Policy Statement*.[66] While we have considered the view of several exceptors that Ms. Byrd may not be a *femme sole trader*, the fact is that the record evidence is simply inadequate, under precedent, to reverse the *I.D.* in her case. *But see supra* note 61. Insofar as ownership/management integration credit remains a pivotal comparative factor, *see supra* note 2, our result here conforms to precedent.

30. ACCORDINGLY, IT IS ORDERED, That the petitions for leave to amend, filed July 31, 1992, September 25, 1992, and November 12, 1992, respectively, by Ormond Broadcasting, Inc. ARE GRANTED, and the amendments ARE ACCEPTED; and

31. IT IS FURTHER ORDERED, That the application of Gloria Bell Byrd (File No. BPH-880912MC) for authority to construct a new FM station on channel 239A at Ormond-By-The-Sea, Florida IS GRANTED; that the application of Ormond Broadcasting, Inc. (File No. BPH-880915MI), deHaro Radio, Ltd., A Florida Limited Partnership (File No. BPH-880915MJ), B H Broadcasting, Inc. (File No. BPH-880915MQ), McFayden Broadcasting Limited Partnership (File No. BPH-880915MR), and Greene Communications, Ltd. (File No. BPH-880915MW) ARE DENIED; and that the application of O.B.S. Radio Limited Partnership (File No. BPH-880915MN) IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

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[59] *See supra* note 41.

[60] Acknowledging the trend toward increased female ownership of business enterprises, the Commission recently abrogated its long-standing "spousal attribution" policy which deployed a very strong presumption that a broadcast property owned by one spouse should be attributed to the other for media diversification purposes. *Clarification of Commission Policies Regarding Spousal Attribution*, 7 FCC Rcd 1920 (1992). Instead of a negative presumption, the Commission iterated seven discrete criteria it would consult in adjudging whether a spouse should be considered independent. *Id.*, at 1922-23 (citing, *inter alia*, and heavily relying upon *Rayne Broadcasting* and *High Sierra)*. We have consulted these criteria, mostly common sensical, as a reference in reviewing Byrd's application, even though the question here goes to "integration" not media diversification. To the degree apposite, we find insufficient evidence upon which to discredit Ms. Byrd's assertion of independence.

[61] The Board is keenly aware that the lead applicant in *Stephen D. Tarkenton* is a son of the aforementioned Dallas Tarkenton, who is also said to have been instrumental in recommending this frequency to Ms. Byrd's husband. *See supra* para. 23. In *Tarkenton*, the Commission noted that the Chief of its Mass Media Bureau Enforcement Division was leading an inquiry to determine "the nature and extent, if any, of Dallas M. Tarkenton's involvement in the applications for FCC authorizations filed by his sons." 7 FCC Rcd at 5973-74 n.7. As indicated, no party here has sought a real-party-in-interest issue; but because of our own familiarity with the matter, *see Stephen D. Tarkenton*, 7 FCC Rcd 1357 (Rev. Bd. 1992), we have reviewed this record very closely for evidence of Dallas Tarkenton's role. Finding no more than the exceptors allege, we go no further. Still, as the Commission intimated in *Tarkenton*, should its inquiry uncover evidence of wrongdoing that implicates this Byrd application, appropriate action will be taken, we are certain. *See* 7 FCC Rcd at 5973-74.

[62] Quoting *Deep South Broadcasting Co. v. FCC*, 278 F.2d 264, 266 (D.C. Cir. 1960).

[63] *See, e.g., Rebecca L. Boedker*, 6 FCC Rcd 2557, 2558 (1991)(longer local residence is decisional), *aff'd per judgment* No. 91-1277 (D.C. Cir. April 24, 1992).

[64] *See, e.g., Bible Broadcasting Network, Inc.*, 7 FCC Rcd 4578 (1992)(even slight diversification demerit dispositive).

[65] *See* deHaro Exceptions at 11.

[66] Even if we held that Greene might be entitled to some (part-time) "integration" credit, *see, e.g. , Helen Broadcasters, Inc.* , FCC 92-477, released October 28, 1992 at para. 1 & n.2, Greene could not prevail over Byrd. *See Policy Statement*, 1 FCC 2d at 395 (full-time credit is paramount). *But cf. Cuban-American Limited*, 5 FCC Rcd 3781, 3785 (1990) (part-time credit will not be granted where record provides no basis for "exact determination" of number of hours to be credited) (subsequent history omitted).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re

Paging Network of Ohio, Inc.

Notice of Apparent Liability for Forfeiture for Station KNKM639 in the Public Land Mobile Service at various locations in Ohio — File No. 216MS0033

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 1, 1992; Released: December 9, 1992

By the Chief, Mobile Services Division:

1. During the months of October, November, and December 1990, the Commission granted 19 separate authorizations to Paging Network of Ohio, Inc. (PageNet) to construct and operate facilities for Station KNKM639 throughout Ohio as part of a multi-state, wide-area system.[1] Sections 22.43(a)(2) and 22.9 of the Commission's Rules required PageNet to complete construction of these facilities within 12 months of the initial grant and file FCC Form 489s no later than the date of required completion of construction indicating the facilities had been built and were serving the public.[2]

2. During October, November, and December 1991, PageNet filed the FCC Form 489s indicating that it had completed construction of the facilities. In January 1992, PageNet and its parent, Paging Network, Inc. (PageNetInc), informed the Commission that although PageNet filed the FCC Form 489s indicating completion of construction of the facilities, the facilities, "although far advanced," were not completed.

3. PageNet and PageNetInc state that upon learning of construction deficiencies at one or more of the sites, they immediately began a thorough review of the construction and licensing procedures of the Ohio system. The investigation revealed that construction of the facilities was substantially but not totally complete at the time the FCC Form 489s were filed. They state that they reasonably relied upon the representations of the Regional Systems Manager (RSM) for Paging Network Central Region, Inc., who was solely responsible for oversight and construction of the Ohio facilities. PageNet and PageNetInc state that the RSM erred in reporting to them that certain facilities were constructed. In their defense, they argue that because there has been confusion over the meaning of the term "constructed," the RSM believed that all that was required was that the facilities be ready for operation and that construction had been timely completed in accordance with the Commission's Rules.[3]

4. PageNet and PageNetInc contend that although PageNet's filing of the FCC Form 489s may be a violation of the Commission's Rules, no forfeiture is warranted. They add that if the Commission deems that a forfeiture is appropriate, the amount should reflect: (1) application of the "Miscellaneous violations" provision of the Commission's *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991) (*Policy Statement*), *recon. denied*, 7 FCC Rcd 5339 (1992), *petition for review pendin g sub nom. USTA v. FCC*, No. 92-1321 (D.C. Cir. filed July 30, 1992); (2) the companies' voluntary disclosure of the problems; and (3) the fact that PageNetInc and its subsidiaries, including PageNet, have an unblemished record with the Commission.

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[1] The applications were for facilities on the following frequencies at the following Ohio locations: 931.2625 MHz at Port Clinton, Ravenna, Toledo, New Philadelphia, Batavia, Circleville, Sabina, Sidney, Urbana, Beaver Creek, Zanesville, Harrisburg, Salem, and Austintown; 928.8625 MHz at Harrisburg and Dayton; 928.9375 MHz at Wooster; 959.9875 MHz at Niles; and 75.98 MHz (control station) at Port Clinton.

[2] Section 22.43(a)(2) of the Commission's Rules, in relevant part, states:

> The station must be completed and ready for operation, as shown by commencement of service within the 12 months after the grant of the radio station authorization....

Section 22.9(b)(1) of the Commission's Rules states:

> *Notification of status of facilities.* (FCC Form 489). When construction has been completed in accordance with the radio station authorization, the licensee shall so notify the Commission using Form 489. Licensees can commence service the day Form 489 is placed in the mail to the FCC.

[3] PageNet and PageNetInc cite *T-Com, Inc.*, 5 FCC Rcd 6691 (1990) (*T-Com*), and *In re South Central Bell*, 3 FCC Rcd 1044 (1988) (*Bell*), claiming that some licensees have believed that "constructed" meant "ready for operation," as opposed to "operational." They point out that instances occurred where, e.g., jumpers from the feed line to a transmitter were not installed and, in one instance, the transmitter itself was not installed. They assert that the contractor, hired by the RSM, constructed the facilities according to the RSM's interpretation of the Commission's Rules and that the RSM was unaware of some of the non-installed equipment prior to his initiating the FCC Form 489 filings. PageNet and PageNetInc requested waiver of Section 22.43(a)(3) and Sections 22.9(b)(2) and (3) of the Commission's Rules and reinstatement of the authorizations that expired on account of non-completion of construction within the required 12-month period. The Mobile Services Division granted the reinstatement request on February 6, 1992.

5. There is no dispute that PageNet filed FCC Form 489s containing incorrect information involving the 19 specified authorizations.[4] Consequently, PageNet appears to have violated Section 22.9 of the Commission's Rules for filing FCC Form 489s containing incorrect information.

6. Section 503(b) of the Communications Act states, in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have--
>
> (B) ... willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation or order issued by the Commission under this chapter ... shall be liable to the United States for forfeiture penalty.

We find that PageNet's filing of the FCC Forms 489 containing incorrect information constitutes willful and repeated conduct within the terms of the statute.[5]

7. Pursuant to the *Policy Statement*, the base forfeiture amount for miscellaneous violations is $5,000. Consistent with the *Policy Statement*, we are adjusting downward the amount to $2,500 because: (1) PageNet voluntarily disclosed its violation; and (2) Commission files do not contradict the companies' assertion that PageNet has a history of prior compliance with the Commission's Rules. We are adjusting upward the forfeiture, however, to $19,000 because PageNet of Ohio's violation was repeated; it filed 19 improper FCC Form 489s. *Accord, SEG Cellular Limited Partnership*, 7 FCC Rcd 74 (1991), *request for remission or reduction granted in part*, 7 FCC Rcd 5920 (1992), *petition for recon. pending* (filed Oct. 9, 1992) (forfeiture doubled because two locations involving the same violation were present).

8. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, Paging Network of Ohio, Inc. IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of nineteen thousand dollars ($19,000) for willful and repeated violations of the aforementioned Rule. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, noting on the payment the File Number of the above captioned proceeding, to the Commission within thirty (30) days of the release date of this Notice, payable to the order of the Federal Communications Commission, to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

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[4] The companies' reference to *T-Com* and *Bell* concerning uncertainty of the meaning of "construction" is misplaced. *T-Com*, decided at least two and one-half years prior to issuance of the first of the relevant grants to PageNet, pointed out that it was not until *Revision and Update of Part 22 of the Public Mobile Radio Services Rules*, 95 FCC 2d 769 (1983), *Part 22 Rewrite Reconsideration Order*, 101 FCC 2d 799 (1985), *Further Reconsideration Order*, 2 FCC Rcd 1798 (1987), that the obligations under Section 22.43(a)(2) to commence operations became clear. *Bell*, decided 11 months prior to the first of PageNet's relevant grants, involved discussing Section 22.43(a) requirements in relation to Section 22.13(f) of the Commission's Rules, which requires licensees to comply with all state certification requirements. Consequently, any "confusion" regarding the meaning of "construction" prior to those cases was cleared up by *T-Com* and *Bell* and, as just mentioned, those cases were decided prior to issuance of PageNet's grants and, thus, prior to PageNet's filing of its FCC Forms 489. Moreover, other than referencing confusion existing at the time of *T-Com* and *Bell*, PageNet and PageNetInc have not proffered any evidence persuading us that there remained confusion over the meaning of "constructed" after *T-Com* and *Bell*.

[5] Section 312(f)(1) of the Communications Act provides:

> The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

This definition applies to Section 503(b) of the Communications Act. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Communications Act provides:

> The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

This definition also applies to Section 503(b) of the Communications Act. *See* H. R. Rep. No. 97-765, 97th Cong. 2nd Sess. 50-51 (1982).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Waiver of Sections 22.117(b) and 22.9(d) of the Commission's Rules for Common Carriers — File No. MSD-93-3

ERRATUM

Adopted: December 1, 1992; Released: December 9, 1992

By the Chief, Mobile Services Division:

1. The above-entitled matter, released November 13, 1992, inadvertently listed Sections 22.9(d)(4) and (6) of the Commission's Rules, 47 C.F.R. §§ 22.9(d)(4),(6), among the rules waived pursuant to an agency-to-agency understanding between the Federal Communications Commission and the Canadian Department of Communications. The above-entitled matter is, therefore, amended to remove all references to Sections 22.9(d)(4) and (6) of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION

Cheryl A. Tritt
Chief, Common Carrier Bureau

CC Docket No. 92-77
Phase I

In the Matter of

Billed Party Preference
for 0+ InterLATA Calls

ORDER DEFERRING SUPPLEMENTAL COMMENT DATE

Adopted: December 1, 1992; Released: December 2, 1992

By the Chief, Common Carrier Bureau:

1. On November 6, 1992, this Commission released a Report and Order and Request for Supplemental Comment in CC Docket 92-77, Phase I, which addressed the need to take immediate action in response to the alleged competitive problems resulting from the use of AT&T proprietary calling cards with the 0+ form of access pending our consideration of the long term costs and benefits of "billed party preference" or BPP. Consistent with the Commission's paramount concern for consumer welfare, and in order to mitigate the competitive problems that result from the use of proprietary IXC calling cards with 0+ access, we required AT&T to change its current practices by revising its access instructions to card holders. Specifically, we directed AT&T to (1) educate its cardholders to check payphone notices and to use 0+ access only at public phones identified as presubscribed to AT&T; (2) to provide clear and accurate access code dialing instructions on every proprietary card issued; and (3) make its 800 access code number easier to use.

2. Supplemental comment was requested in paragraph 64 of the Report and Order on methods for compensating operator service providers who receive 0+ dialed proprietary card calls and transfer those calls to the proprietary card issuers for completion, and on the network interoperability and implementation issues related to the provision of such 0+ call transfer service. The Report and Order specified December 7, 1992 as the initial comment date, and January 6, 1993 as the reply comment date. We hereby defer the initial comment date by one week, to December 14, 1992. The reply comment date of January 6, 1993 shall remain unchanged.

3. Accordingly, IT IS ORDERED, pursuant to 47 C.F.R. §§ 0.91, 0.291, that the supplemental comments as requested in paragraph 64 of the Report and Order and Request for Supplemental Comment, released on November 6, 1992, in CC Docket No. 92-77, Phase I, SHALL BE FILED on or before December 14, 1992. Reply Comments SHALL BE FILED on or before January 6, 1993.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 92-13

In the Matter of

Tariff Filing Requirements for
Interstate Common Carriers

ORDER

Adopted: November 25, 1992; Released: November 25, 1992

By the Commission:

1. On November 5, 1992, we adopted a *Report and Order* in this proceeding, also being released today, which reaffirmed both the lawfulness of our permissive detariffing rules and our conclusions that such rules serve the public interest. *Tariff Filing Requirements for Interstate Common Carriers*, FCC 92-494. Shortly thereafter, on review of a related complaint decision, the United States Court of Appeals for the District of Columbia Circuit vacated our permissive detariffing rules, as applied in the *Fourth Report and Order* in the *Competitive Carrier* proceeding, 95 FCC 2d 554 (1983). *AT&T v. FCC*, No. 92-1053 (D.C. Cir. Nov. 13, 1992).

2. Although the court's mandate has not been issued, in light of the court's decision, we are, on our own motion, staying our *Report and Order*, pending any further litigation of the matters decided in the *AT&T* case.

3. Accordingly, IT IS ORDERED THAT, the *Report and Order* in this proceeding, FCC 92-494, adopted November 5, 1992, IS STAYED until further notice.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: November 25, 1992

TARIFF FILING REQUIREMENTS FOR INTERSTATE COMMON CARRIERS

On November 13, 1992, the United States Court of Appeals for the District of Columbia Circuit vacated, as part of its ruling on the Commission's disposition of a Section 208 complaint, *AT&T Communications v. MCI Telecommunications Corp.*, 7 FCC Rcd 807 (1992), the permissive detariffing rules as applied in the Commission's *Fourth Report and Order* in the *Competitive Carrier Proceeding*. *See AT&T Co. v. FCC*, No. 92-1053; 95 FCC Rcd 554 (1983). The court withheld the issuance of its mandate until 7 days after the disposition of any timely petition for rehearing.

The Commission has decided to petition the court for rehearing with a suggestion for rehearing *en banc*. Until the Court acts on the petition and issues the mandate, it is possible that nondominant carriers affected by the court's decision will file tariffs in order to avoid the possibility of damage claims. The Commission does not intend to reject these tariffs for failure to comply with the technical requirements set forth in our rules regarding the form of tariffs. 47 C.F.R. Part 61. Further, the Commission does not intend to initiate independent enforcement action for such rule violations against those carriers.

For further information, contact Mary Brown, Tariff Division, Common Carrier Bureau, at (202) 632-6387, Donna N. Lampert, Policy and Program Planning Division, Common Carrier Bureau, at (202) 632-6365, or John Ingle, Office of General Counsel, at (202) 632-7112.

Action by the Commission November 25, 1992.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-284

In the Matter of

Amendment of Section 73.202(b), **RM-8119**
Table of Allotments,
FM Broadcast Stations.
(Repton, Alabama)

NOTICE OF PROPOSED RULE MAKING

Adopted: November 18, 1992; Released: December 9, 1992

Comment Date: February 3, 1993
Reply Comment Date: February 18, 1993

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed by Curry Communications, Inc. ("petitioner") requesting the allotment of FM Channel 266A to Repton, Alabama, as that community's first local aural transmission service. Petitioner stated its willingness to apply for the channel, if allotted.[1]

2. A staff engineering review of the proposal reveals that Channel 266A can be allotted to Repton consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules without the imposition of a site restriction.[2]

3. We believe the public interest would be served by proposing the allotment of Channel 266A to Repton, Alabama, since an interest has been expressed in providing that community with its first local aural transmission service. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, to include the community listed below, as follows:

	Channel No.	
City	Present	Proposed
Repton, Alabama	–	266A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **February 3, 1993**, and reply comments on or before **February 18, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Curry Communications, Inc.
Attn: Albert Curry, President
107 Pickens Street
Monroeville, AL 36460

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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[1] We note that petitioner's request was signed and its address given. However, it failed to include an affidavit verifying that the statements contained in its petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.402(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. Petitioner is requested to correct this omission in its comments.

[2] Coordinates used for requested Channel 266A at Repton are 31-24-30 and 87-14-24.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-283

In the Matter of

Amendment of Section 73.202(b), RM-8122
Table of Allotments,
FM Broadcast Stations.
(Hope and Fordyce, Arkansas)

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: November 18, 1992; Released: December 9, 1992

Comment Date: February 3, 1993
Reply Comment Date: February 18, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed on behalf of KdB, Inc. ("petitioner"), licensee of Station KXAR-FM, Channel 269A, Hope, Arkansas, seeking the substitution of Channel 269C2 for Channel 269A, and modification of its license to specify operation on the higher powered channel. In order to accommodate the request in conformity with the minimum distance separation requirements of the Commission's Rules, petitioner also requests the substitution of Channel 272A for Channel 269A at Fordyce, Arkansas, and modification of the license of Dallas Properties, Inc. for Station KQEW(FM). Petitioner adds that the Fordyce substitution would provide Station KQEW(FM) the opportunity to operate at maximum Class A facilities, an advantage which is not presently available to that community.

2. A staff engineering analysis reveals that Channel 269C2 can be substituted for Channel 269A at the petitioner's suggested site, located 2.6 kilometers (1.6 miles) west of the community,[1] consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules.[2] Additionally, Channel 272A can be substituted for Channel 269A at Fordyce, Arkansas, at the authorized site of Station KQEW(FM).[3]

3. We believe the public interest would be served by the proposal since it could enable Station KXAR-FM to expand its coverage area. Therefore, we will solicit comments on the proposal.

4. The petitioner's modification request at Hope is consistent with the provisions of Section 1.420(g) of the Commission's Rules. Therefore, we shall propose to modify the license for Station KXAR-FM without entertaining competing expressions of interest in the use of Channel 269C2 at that community, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. In addition, we shall direct an *Order to Show Cause* to the licensee of Station KQEW(FM) at Fordyce, Arkansas, as to why its license should not be modified to specify operation on Channel 272A in lieu of Channel 269A.

5. Commission policy requires that the licensee of Station KQEW(FM) be reimbursed for the reasonable costs incurred in changing frequencies. *See Circleville, OH*, 8 FCC 2d 159 (1976). Petitioner has stated its willingness to reimburse the licensee of Station KQEW(FM) for its reasonable costs associated with moving to Channel 272A.

6. In view of the above, the Commission believes it is appropriate to solicit comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

	Channel No.	
City	Present	Proposed
Hope, Arkansas	269A, 285A	269C2, 285A
Fordyce, Arkansas	269A	272A

7. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Dallas Properties, Inc., licensee of Station KQEW(FM), Channel 269A, Fordyce, Arkansas, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 272A in lieu of Channel 269A.

8. Pursuant to Section 1.87 of the Commission's Rules, Dallas Properties, Inc. may, not later than **February 3, 1993**, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Dallas Properties, Inc. to furnish additional information. If Dallas Properties, Inc. raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Dallas Properties, Inc. will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

9. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the licensee of

[1] Coordinates at the petitioner's suggested site for Channel 269C2 at Hope are 33-40-15 and 93-37-10.

[2] The proposal for Channel 269C2 at Hope conflicts with the presently licensed operation of Station KENA-FM on Channel 269A, Mena, Arkansas, ath)coordinates 34-34-23 and 94-14-55. However, Station KENA-FM has been modified to specify operation on Channel 271C2 in MM Docket No. 89-290. *See* 7 FCC Rcd 5493 (1992). A copy of this *Order* will be served on Station KENA-FM.

[3] Coordinates at the licensed site of Station KQEW(FM) are 33-48-17 and 92-26-07.

Station KQEW(FM) as follows: Dallas Properties, Inc. 303 Spring Street, Fordyce, Arkansas 71742 and to Ouachita Communications, Inc., Radio Station KENA-FM, 1207 Texas, Mena, Arkansas 71953.

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before **February 3, 1993**, and reply comments on or before **February 18, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Anne Thomas Paxson, Esq.
Borsari & Paxson
2033 M Street, N.W.
Suite 630
Washington, D.C. 20036h)

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

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(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service*. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate

of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-337

In re Applications of

GEORGIA PUBLIC TELECOMMUNICATIONS COMMISSION	File No. BPED-870727MA
LOWELL MAZE JACKSON	File No. BPH-870727MD
IVAN M. MILES	File No. BPH-870727ME
JOHNSON BROADCASTING, INC.	File No. BPH-870727MF
Paul Uhry Mazo d/b/a MAZO RADIO CO.	File No. BPH-870727MJ
ROBERT W. ROUNSAVILLE	File No. BPH-870727MK
SOUTHERN RADIO SERVICES, INC.	File No. BPH-870727ML
EATHEL HOLLEY	File No. BPH-870727MQ

For Construction Permit for New
FM Station, Channel 298A (107.5 MHz)
Roswell, Georgia

MEMORANDUM OPINION AND ORDER

Adopted: November 23, 1992; Released: December 9, 1992

By the Commission:

1. Before the Commission are Applications for Review filed by seven parties to this eight-party comparative case. The seven parties are Robert W. Rounsaville (Rounsaville), Eathel Holley (Holley), Lowell Maze Jackson (Jackson), Ivan Miles (Miles), Mazo Radio Co. (Mazo), Southern Radio Services (Southern), and Georgia Public Telecommunications Commission (GPTC). These parties seek review of a decision of the Review Board that reversed the Initial Decision (I.D.) of Administrative Law Judge Richard L. Sippel (ALJ)[1] and granted the application of the eighth applicant, Johnson Broadcasting, Inc. (JBI) for a new FM channel in Roswell, Georgia. *Decision*, 7 FCC Rcd 2942 (released May 8, 1992). The Mass Media Bureau (MMB), Rounsaville, and JBI filed Oppositions to the Application for Review on June 23, 1992.[2]

2. The comparative hearing on the eight applications for the Roswell channel was conducted pursuant to the FCC's *Policy Statement on Comparative Broadcast Hearings (1965 Policy Statement)*.[3] The ALJ, who had disqualified JBI on real-party-in-interest and false financial certification issues, found that Miles was the comparatively superior applicant.[4] The Review Board concluded that, despite the D.C. Circuit's remand of *Susan M. Bechtel v. FCC*, 957 F.2d 873 (D.C. Cir. 1992), *cert. denied sub nom. Galaxy Communications, Inc. v. FCC*, No. 91-1744 (Oct. 5, 1992) to the Commission to explain its continued reliance on the integration criterion[5] and the Commission's subsequent initiation of a rule making proceeding to consider revising the comparative hearing process.[6] this proceeding was controlled by the *1965 Policy Statement*.[7] It thereafter found that the ALJ erred in concluding that JBI was not basically qualified and, furthermore, that under the standard comparative criteria, JBI, not Miles, was the superior applicant.[8]

3. The Applications for Review of six of the unsuccessful parties challenge the Review Board's finding that JBI is basically qualified and argue their own comparative superiority. The Application for Review of the seventh unsuccessful party, GPTC, argues that both the ALJ and Review Board erred in adhering strictly to the standards of the *1965 Policy Statement* in selecting a preferred applicant in the proceeding. Specifically, GPTC argues that factors other than GPTC's integration proposal should have been considered in determining the likelihood that GPTC would provide programming in the public interest. It further argues that GPTC should not have been assessed a demerit for its ownership of other broadcast stations in the state of Georgia because it will in fact enhance program diversity by providing program services that will satisfy needs that are not otherwise being met. GPTC asks that we reverse the Board's decision and remand the case for receipt of additional GPTC evidence on these issues.

4. For the reasons set forth below, we conclude that the Review Board correctly determined that the *1965 Policy Statement* controls this proceeding. Therefore the ALJ correctly declined to consider factors other than GPTC's integration proposal to predict the liklihood of programming in the public interest and properly assessed GPTC a diversification demerit because of its ownership of other Georgia broadcast facilities.[9] Furthermore, we conclude that the Review Board was correct in finding that JBI should not

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[1] *Initial Decision*, 6 FCC Rcd 2841 (ALJ 1991).

[2] On the same date Miles filed a partial Opposition to the Applications for Review challenging statements in the other parties' pleadings concerning Miles' showing under the comparative criteria.

[3] 1 FCC 2d 393 (1965).)

[4] 6 FCC Rcd at 2863 paras. 174-177.

[5] In *Anchor Broadcasting Limited Partnership*, 6 FCC Rcd 721 (1991), the Commission preferred the applications of Anchor Broadcasting and Galaxy Communications, Inc. over that of Susan M. Bechtel because, unlike Bechtel, they proposed to integrate their ownership into management. Bechtel ultimately appealed the decision to the United States Court of Appeals for the District of Columbia Circuit, which remanded the case to the Commission.

[6] *Reexamination of the Policy Statement on Comparative Broadcast Hearings*, 7 FCC Rcd 2664 (1992).

[7] 7 FCC Rcd at 2942 para. 2.

[8] 7 FCC Rcd at 2949 para. 37.

[9] 6 FCC Rcd at 2862-2863, paras. 161, 174.

have been disqualified on false certification and real-party-in-interest issues and that JBI is the comparatively superior applicant.[10]

Georgia Public Telecommunications Commission

5. In comparative hearings, "integration," that is, full-time participation of owners (or directors of non-profit corporations) in the management of the proposed station, is "a factor of substantial importance." 1 FCC 2d at 395. Diversification of media of mass communications is a "factor of primary significance." *Id.* at 394. GPTC, an agency of the state of Georgia comprised of eight Commissioners, proposed no integration. It currently operates nine FM stations and nine television stations in the state of Georgia. In the *Initial Decision* the ALJ therefore awarded GPTC no integration credit and gave it a substantial diversification demerit. The Review Board declined to consider the "novel issues" raised by GPTC that additional evidence outside the scope of the standard comparative issues should be considered in selecting the superior applicant in this proceeding, indicating that it had no jurisdiction over such matters.[11] In selecting a superior applicant solely on the basis of the standard comparative criteria, it relied on our statement in *Reexamination of the Policy Statement on Comparative Broadcast Hearings* that any new criteria adopted pursuant to the *Reexamination* would not apply to cases currently in hearing status.[12] As explained below, we agree with the Review Board's decision. As an initial matter, we also note that, to the extent GPTC argues its application should be treated differently from other applications because of its non-commercial nature, GPTC chose to compete in a proceeding for a commercial allocation, not a non-commercial allocation. Accordingly, it had full notice of the pertinence and nature of the criteria that would be used to evaluate its proposal for a commercial allocation.

6. *The integration issue.* Though purportedly arguing that factors other than the integration of ownership into management should be considered in predicting an applicant's likelihood of programming in the public interest, GPTC in fact launches a general attack against the validity of the integration criterion very similar to that which the Commission recently addressed in the remanded *Bechtel* case. *See Anchor Broadcasting Limited Partnership*, 7 FCC Rcd 4566 (1992) (*Bechtel* remand decision).[13] Specifically, GPTC argues that the 1982 repeal of the anti-trafficking rule and adoption of the "*Anax* " doctrine eviscerated the rationale underlying the integration criterion,[14] that extensive and ever-changing case law evolving from application of the criterion has rendered comparative broadcast cases a legal "no-man's land," and that the Commission has never developed "empirical evidence" to demonstrate that "integrated" ownership in fact yields service more attuned to the public interest. GPTC concludes that, given these circumstances, the Commission should not rely exclusively on the integration criterion in deciding whether an applicant will program in the public interest. Additional factors that GPTC believes should have been considered in its own case include evidence intended to support conclusions that GPTC's ownership and operation of stations is "permanent," that the people who set the policies for GPTC stations are diverse and well-credentialed, and that GPTC's professional managers have noteworthy backgrounds, long tenures, and local resident status.

7. In response to GPTC's generalized attack regarding reliance on the integration criterion in selecting a preferred applicant, we reiterate our conclusions in the *Bechtel* remand decision. We are not persuaded that policy changes cited by GPTC -- elimination of the anti-trafficking rule and adoption of the *Anax* doctrine -- have eviscerated the validity of the integration criterion. *See* 7 FCC Rcd at 4567 para. 11. We have undertaken a rulemaking to determine whether the *1965 Policy Statement* should be modified because we believe doing so at this time may be in the public interest, not because we believe the rationale underlying the integration criterion has been undermined by recent policy shifts. 7 FCC Rcd at 4568 para. 17. Therefore, the integration criterion is relevant for the resolution of this proceeding. 7 FCC Rcd at 4568 paras. 18-22.

8. GPTC's argument that it should have been permitted to offer evidence other than an integration proposal in order to show that it is likely to offer program service in the public interest in effect asks the Commission to modify the standard comparative issue for this case in order to accommodate GPTC's claimed strengths. Having previously determined that the integration criterion as articulated in the *1965 Policy Statement* would continue to be applied in pending cases, we can see no reason for granting GPTC's request to remand the case to consider such evidence. Such action would defeat without justification the strong public interest in promptly instituting new service. Therefore, we deny GPTC's request to remand and to permit further evidence on the question of whether GPTC is more likely than other applicants to provide program service in the public interest.[15]

9. *The diversification issue.* GPTC argues that it should not have been assessed a diversification demerit in this proceeding even though it owns nine television stations and nine other FM stations in Georgia. GPTC proposes to offer classical music and cultural programming on its main channel and a radio reading service for the visually impaired on the subcarrier. It contends that these programming proposals will meet unserved needs and thus enhance

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[10] 7 FCC Rcd 2946 at para. 24, 2948 para. 34, 2942-43 paras. 3-6.

[11] 7 FCC Rcd at 2944 para.10.

[12] 7 FCC Rcd 2664, 2669 (1992).

[13] *See* note 5 *supra*.

[14] GPTC argues that the *1965 Policy Statement* assumed integration proposals would be "permanent." However, in 1982 the Commission changed the requirement that successful applicants hold their stations for three years to require only a one year holding period. *Transfer of Broadcast Facilities*, 52 RR 2d 1081, 1086-90 paras. 21-35 (1982). The previous year we adopted a policy first enunciated in *Anax Broadcasting, Inc.*, 87 FCC 2d 483 (1981), under which the interests of passive owners were not attributed to the integration proposal if they would exert no control over the licensee. GPTC argues that these actions led to a "grain-futures" environment where two-tiered integration proposals are structured to maximize the potential of obtaining a permit with an intent from inception of selling for a large profit at the earliest possible moment.

[15] In any event, we agree with JBI that it is not at all clear that a hearing on GPTC's integration claims would establish that its proposal is more likely to be attuned to the needs and interests of the Roswell area or that it will be a more permanent proposal.

diversity in the Roswell area, a result that should have improved GPTC's comparative standing.[16] Instead, GPTC was assessed a substantial diversification demerit.

10. GPTC is in effect arguing that it should be excused from application of the diversification criterion because of specialized programming it proposes to offer. Previously in this proceeding GPTC in fact filed a motion seeking to obtain a specialized programming issue.[17] The ALJ denied the motion under the prevailing standard. *Memorandum Opinion and Order*, FCC 89M-2742, released December 7, 1989.[18] He concluded that the evidence GPTC submitted in support of its motion was "insufficient,"[19] and, in addition, that the evidence adduced by other parties showed that both classical programming and programming for the visually impaired and blind are already available to Roswell residents in a "reasonable amount."[20] GPTC persists here in asserting that it intends to satisfy "unmet" programming needs if it receives the Roswell permit, but makes no attempt to show that the ALJ erred either in his conclusions concerning the adequacy of GPTC's evidence or in weighing the evidence submitted by other parties. Given this circumstance, we have no reason for concluding that the premise underlying GPTC's argument that it should be exempt from the standard diversification criterion, *i.e.*, that its programming will in fact "enhance diversity," is sound. On that basis alone, and without otherwise addressing the merits of GPTC's contentions, we reject GPTC's argument and conclude that a substantial diversification demerit was properly assessed against GPTC because of its ownership of numerous other broadcast facilities in Georgia.

Johnson Broadcasting, Inc.

11. As stated, the ALJ in this proceeding disqualified JBI on false certification and real-party-in-interest grounds and found that Miles was the comparatively superior applicant. The Review Board concluded that the ALJ erred in disqualifying JBI on those grounds, and, furthermore, that JBI was the comparatively superior applicant. We conclude that substantial evidence supports the Review Board's determinations.

12. Specifically concerning the false certification issue, the Review Board correctly noted that the relevant inquiry hereis whether JBI's sole voting shareholder, Frank Johnson (Johnson), intended to deceive the Commission about JBI's financial qualifications when he certified the application. *See RKO General, Inc.*, 5 FCC Rcd 638, 639 para. 11 (1990) (alleged misconduct of applicant did not reflect on his character since "his actions rebutt[ed] any inference that he intend[ed] to deceive the Commission" when he certified as to financial qualifications); *Armando Garcia* 3 FCC Rcd 1065, 1067 para. 15 (Rev. Bd. 1988), *rev. denied*, 3 FCC Rcd 4767 (1988) ("with respect to allegations that [the applicant] falsely certified his application, it is well established that an intent to deceive must be demonstrated....").[21] As the Review Board amply explained, Johnson's actions indicated he did not intend to deceive.[22]

13. The Board also explained that in a real-party-in-interest inquiry the focus is whether a third person has an undisclosed ownership interest in an application or will be in a position to actually or potentially control the applicant. *Astroline Communications Co. v. FCC*, 857 F. 2d 1556, 1564 (D.C. Cir. 1988) (quoting *KOWL, Inc.*, 49 FCC 2d 962, 964 (Rev. Bd. 1974). It is undisputed that Sonrise Management Services, Inc., (Sonrise), the entity that organized the group that ultimately became JBI, had significant involvement with JBI prior to the time that the application was filed.[23] However, we agree that there is no evidence that Sonrise ever had an ownership interest in JBI, and there is insufficient evidence to conclude that Sonrise was in actual control of or had the potential to control JBI.[24]

14. Finally, we respond to arguments by several parties that this case should be remanded to determine whether JBI was in fact financially qualified when Johnson certified the JBI application. These parties argue in essence that the ALJ erred when, on the basis of an October 3, 1989 bank letter indicating a willingness to loan JBI the funds necessary to build the Roswell station, he deleted a financial qualifications issue previously specified against JBI without requiring JBI to show that it was financially qualified *ab initio*. In *Aspen FM, Inc.*, 5 FCC Rcd 3196 (Rev. Bd. 1990), *aff'd* 6 FCC RCD 1602 (1991), we noted that a new financial proposal can be accepted only if the applicant petitions to amend its application pursuant to 47 C.F.R. section 73.3522(b), and, as part of the "good cause" showing for the amendment, demonstrates that it had reasonable assur-

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[16] GPTC concedes that "the changing nature of programming formats" has provided a basis for the Commission's general refusal to consider specialized programming in selecting permittees. However, GPTC asserts that, because its proposals are based on twelve years of experience in operating nine other Georgia radio stations and because it will not be driven by commercial considerations, its programming proposals represent a long-term commitment to serve the public, so that the Commission should make an exception to the general practice.

[17] GPTC filed a pleading entitled Motion to Modify or Interpret the Scope of the Standard Comparative Issue on September 21, 1989.

[18] Specialized programming issues are appropriate where an applicant makes a showing that it proposes to provide a format that is not available in the market in a substantial amount. *See George E. Cameron Jr. Communications*, 71 FCC 2d 460, 464-466 (1979). The ALJ concluded that programming for the blind would qualify as "specialized programming" meriting addition of a specialized programming issue if the evidence indicated that the need for such programming was currently unsatisfied. FCC 89M-2742 at para. 16 n.3.

[19] FCC 89M-2742 at para. 15. The evidence submitted relied on an admittedly non-random survey in which elected officials and professional educators participated. The ALJ found that, since GPTC is itself a state entity, the survey did not offer "disinterested proof."

[20] *Id.* at paras. 18-19.

[21] Holley argues that this conclusion is inconsistent with *Victorson Group, Inc.*, 6 FCC Rcd 1697, 1700 (1991), and *Aspen FM, Inc.*, 5 FCC Rcd 3196 (Rev. Bd. 1990), *aff'd* 6 FCC Rcd 1602 (1991). However, in these cases the Commission did not, as Holley asserts, disqualify applicants on false financial certification issues without reaching the question of intent. Rather, the Commission disqualified the applicants on financial qualifications issues and found there was no need to reach the more subjective question of intent that is inherent in a false certification issue.k

[22] 7 FCC Rcd at 2948 paras. 32-34.

[23] 7 FCC Rcd at 2945 para. 20.

[24] *See* 7 FCC Rcd at 2944-2946, paras. 12-23.

ance of financing at the time of certification.[25] We have been increasingly stringent in enforcing this requirement, and it is with some trepidation that we depart from it here.

15. However, we agree with the Review Board that this is an extraordinary proceeding in that Johnson engaged in serious and reasonable efforts to ensure that JBI was financially qualified at the time of certification but was nonetheless duped by individuals who had apparently developed an elaborate scheme for defrauding innocent investors. Furthermore, when Johnson realized that, due to circumstances entirely beyond his control, JBI's financial resources might be questionable, he quickly took steps to obtain adequate substitute financing.[26] JBI is without question financially qualified now and, taking the record as a whole, there are no other questions as to his qualifications to be a Commission licensee. We believe that these facts, coupled with the fact that all other parties to this proceeding have waived the right to object to JBI's initial financial qualifications by failing to file an exception to the *I.D.*,[27] justify making a limited exception to *Aspen*. While some circumstances could warrant our concluding *sua sponte* to remand a proceeding because overriding public interest questions have been raised, that is not the case here. Rather, a remand here would be contrary to the public interest because it would cause significant delay in institution of a new service to Roswell without justification.[28]

16. ACCORDINGLY, IT IS ORDERED That, pursuant to 47 C.F.R. section 1.115(g), the applications for review filed on June 5, 1992 by Robert W. Rounsaville and Eathel Holley and on June 8, 1992 by Lowell Maze Jackson, Ivan Miles, Mazo Radio Co., Southern Radio Services, and Georgia Public Telecommunications Commission ARE DENIED.[29]

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

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[25] The *HDO* in this proceeding was released August 16, 1989, the bank letter was dated October 3, 1989 and submitted October 10, 1989.

[26] 7 FCC Rcd at 2948-49, paras. 35-36.8

[27] *See* 47 C.F.R. section 1.277(a).

[28] Several parties further argue that JBI, even if found basically qualified, is not the comparatively superior applicant. They contend that JBI should not have been given 100% integration credit for Johnson's participation in management, which credit was dispositive in the comparative process. 7 FCC Rcd at 2943 paras. 4-6. We reject the argument that 100% integration credit should be denied because corporate papers establishing JBI as a two-tiered organization with one voting stockholder were not signed and filed until almost two years after the "B" cut-off date. *See, Coast TV*, 4 FCC Rcd 1786, 1788-89 paras 12-16 (1989) (subsequent history omitted) (organizational structure need not be documented at the time of filing for the applicant to receive credit for its integration proposal, if the structure is legitimate and is adhered to.) We likewise reject the argument that JBI was improperly awarded qualitative credit on the basis of Johnson's minority status because a petition for certiorari challenging the constitutionality of the minority preference was pending. The Commission filed an opposition to the petition for certiorari, and the Supreme Court subsequently denied the petition. *Galaxy Communications, Inc. v. FCC*, No. 91-1744 (Oct. 5, 1992). Thus there is no justification for deviation from our policy of awarding a preference for minority ownership.

[29] Mazo requests that we clarify whether findings of the ALJ concerning an undisclosed real-party-in-interest issue will have a *res judicata* (or more properly collateral estoppel) effect in other future proceedings concerning Mazo principals. Mazo notes that it filed extensive Exceptions to the *I.D.* on the issue, but the Review Board did not address those Exceptions because Mazo's application was denied on other grounds. We find it would be inappropriate to give the findings of the ALJ on this issue collateral estoppel effect, since these findings were not actually litigated to a final decision in which they were necessary to the outcome. *See Pantex Towing Corp. v. Glidewell*, 763 F.2d 1241, 1245 (11th Cir. 1985).

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 92-289

In the Matter of

Amendment of the Amateur Service	RM-7868
Rules Concerning the 222-225 MHz	RM-7869
and 1240-1300 MHz Frequency Bands.	RM-7888

NOTICE OF PROPOSED RULE MAKING

Adopted: November 30, 1992; Released: December 11, 1992

Comment Date: February 23, 1993
Reply Comment Date: March 23, 1993

By the Commission:

I. INTRODUCTION

1. This *Notice of Proposed Rule Making* (*Notice*) responds to three petitions that involv[illegible]nrelated changes to the Rules for the amateur service [illegible]2-225 MHz band. It proposes to create a small new subband where repeaters are prohibited, to authorize frequency privileges for Novice Class operators in the entire band, and to allow Novice Class operators to be licensees and control operators of repeaters in the 222-225 MHz band as well as in the 1270-1295 MHz segment of the 1240-1300 MHz band.[1]

II. DISCUSSION

2. The requested changes address operational standards primarily for the 222-225 MHz band. The American Radio Relay League, Inc. (ARRL) requests that a new subband be designated at 222.00-222.15 MHz where repeaters would be prohibited, but where all other types of station operation could continue (RM-7869). The ARRL states that a small segment is needed where experimentation can take place but where frequencies need not be shared with repeaters. In comments filed in response to the petition, some commenters argue that such a matter should be decided by the local frequency coordinator. The ARRL argues, however, that protection of other types of operation from interference by repeaters cannot be assured other than by regulation.

3. The ARRL also requests expansion of the frequency privileges for Novice Class operators[2] to encompass the entire 222-225 MHz band (RM-7868).[3] The ARRL believes that Novice Class operators will benefit from such expansion because they will be exposed to routine types of amateur station operation other than repeater operation. Dr. Michael C. Trahos (Trahos) requests that Novice Class operators be authorized to be licensees and control operators of repeaters (RM-7888)[4] in the 222-225 MHz band and in the 1270-1295 MHz Novice subband. He argues that the amateur service should follow the General Mobile Radio Service (GMRS) and the Private Land Mobile Radio Services where licensees are authorized to be licensees of repeaters without even being required to pass an examination in proper repeater operation.[5]

4. We believe that there is merit in these petitions. They offer improvements in the operational standards for the amateur service. The availability of a small protected subband at 222.00-222.15 would facilitate experimentation. Permitting Novice Class operators to be licensees and control operators of repeaters and authorizing them additional frequency privileges would provide an opportunity for Novice Class operators to become proficient in a wider variety of amateur service operations. They would also have more flexibility in selecting the mode of transmission. Choosing the appropriate mode would result in a more efficient use of available spectrum. Comments are invited on the effect that the proposed changes would have on Novice Class licensees.[6]

5. In accordance with the foregoing discussion, we propose to establish a subband in the 222-225 MHz band at 222.00-222.15 MHz where repeaters would be prohibited. We also propose to authorize privileges in the entire

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[1] Because the amateur service frequency bands often differ between the three International Telecommunication Union (ITU) regions, the amateur community worldwide refers to radio spectrum in terms of approximate wavelength as measured in meters (m). Part 97 of the Commission's Rules, 47 C.F.R. §§ 97.1-97.527, also uses this terminology to designate frequency bands. The frequency band 222-225 MHz, therefore, is designated as the 1.25 m band, and the 1240-1300 MHz band is designated as the 23 centimeter (cm) band. Frequencies between 1270-1295 MHz comprise a segment of the 23 cm band.

[2] As of June 30, 1992, there were 98,577 licensees holding the Novice Class operator license.

[3] Currently, Novice Class operators are authorized control operator privileges in only 1.81 MHz of spectrum (222.10-223.91 MHz) in this band.

[4] Section 97.205(a), 47 C.F.R. § 97.205(a), in effect, prohibits a Novice from being the station licensee or control operator of a repeater.

[5] Section 97.503, 47 C.F.R. § 97.503, requires each written examination be such as to prove that the examinee possesses the operational and technical qualifications necessary to perform properly the duties associated with the privileges of the class of license sought. Trahos acknowledges, however, that a GMRS licensee must be 18 years of age or older. Trahos also requests that the privileges requested be conditioned upon the use of "commercial equipment" and low transmitter power limits. The former is not feasible because amateur VHF and UHF repeater transmitters are not subject to the Commission's type acceptance program. The low power limits requested by Trahos, moreover, are those already required in Section 97.313(d) and (e), 47 C.F.R. § 97.313(d) and (e).

[6] We note that in the *Report and Order* in PR Docket No. 90-55, 5 FCC Rcd 7631 (1990), the Commission amended the amateur service rules based on, among other things, the amateur community's view that the Novice Class operator license is needed as an entry level for persons who cannot pass the more-difficult written examination for the Technician Class license, but who can pass a slow-speed telegraphy examination. Comments are also requested, therefore, on the effect that the proposed changes would have on the current amateur operator license class structure.

222-225 MHz band to Novice Class operators and to allow them to be repeater licensees and control operators in the 222-225 MHz band and in the 1270-1295 MHz subband.

6. Accordingly, IT IS ORDERED that petitions for rule making RM-7868 and RM-7869 ARE GRANTED and RM-7888 IS GRANTED IN PART and IS DENIED IN PART with respect to the request to condition Novice operator privileges upon the use of commercial equipment.

III. PROCEDURAL MATTERS

Ex Parte Rules-Non Restricted Proceeding

7. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

Regulatory Flexibility Act

8. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because, if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The amateur stations that are the subject of this proceeding would not be authorized to transmit any communications that facilitate the business or commercial affairs of any party. *See* 47 C.F.R. § 97.113(a). The Secretary shall send a copy of this *Notice*, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601-612 (1980).

Comment Dates

9. Authority for issuance of this *Notice* is contained in Sections 4(i) and 303(c), (f), and (r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(c), (f), and (r). Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before **February 23, 1993**, and reply comments on or before **March 23, 1993**. To file formally in this proceeding, you must file an original and four copies of all comments and reply comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D. C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N. W., Washington, D. C. 20554.

10. For further information, call Maurice J. DePont, Private Radio Bureau, (202) 632-4964.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

Part 97 - Amateur Radio Service

1. The authority citation for Part 97 continues to read as follows:

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. §§ 151-155, 301-609, unless otherwise noted.

2. Section 97.201(b) is revised to read as follows:

§ 97.201 Auxiliary station.

* * * * *

(b) An auxiliary station may transmit only on the 1.25 m and shorter wavelength frequency bands, except the 222.00-222.15 MHz, 431-433 MHz, and 435-438 MHz segments.

* * * * *

3. Paragraphs (a) and (b) of Section 97.205 are revised to read as follows:

§ 97.205 Repeater station.

(a) Any amateur station may be a repeater. A holder of any class operator license may be the control operator of a repeater, subject to the privileges of the class of operator license held.

(b) A repeater may receive and retransmit only on the 10 m and shorter wavelength frequency bands except the 28.0-29.5 MHz, 50.0-51.0 MHz, 144.0-144.5 MHz, 145.5-146.0 MHz, 222.00-222.15 MHz, 431.0-433.0 MHz, and 435.0-438.0 MHz segments.

* * * * *

4. The entry under VHF in Section 97.301(f) is amended by revising the frequencies authorized for use by Novice Class operators in ITU Region 2 to read as follows:

§ 97.301 Authorized frequency bands.

* * * * *

(f) For a station having a control operator holding a Novice Class operator license:

Wavelength band	ITU Region 1	ITU Region 2	ITU Region 3	Sharing requirements See § 97.303, Paragraph:
VHF	MHz	MHz	MHz	
1.25m	---	222-225	---	(a)

* * * * *

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Application of

Private Networks, Inc. File No. 12163-CM-P-83

For Authority to Construct and Operate
a Multichannel Multipoint Distribution
Service station on the E-group
channels at Lubbock, Texas

ORDER ON RECONSIDERATION

Adopted: December 3, 1992; Released: December 9, 1992

By the Chief, Domestic Facilities Division:

1. *Introduction.* Private Networks, Inc. (Private) filed a petition for reconsideration of the dismissal by the Domestic Facilities Division (Division) on delegated authority of its application for authority to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the E-group channels at Lubbock, Texas, and requested reinstatement of its application. An opposition, a response to opposition, and a reply were filed.

2. *Background.* As the result of a Commission lottery, the above-referenced application was selected for qualification review. Subsequently, Division staff initiated qualification review of this application pursuant to 47 C.F.R. Sec. 21.32. Upon examination, the application was found to contain several deficiencies that precluded the staff from making a finding that Private was legally, technically, financially, and otherwise qualified to be a licensee, and that a grant of its application would serve the public interest. Private was notified by letter of these deficiencies and provided an opportunity to cure them within thirty (30) days of the date of the letter.[1] In this deficiency letter, Private was also advised that failure to file the requested information within thirty days could result in the dismissal of its application.

3. Private provided some, but not all, of the information necessary to complete processing of its application. Pursuant to Sections 21.13(c), 21.20(d) and 21.28(d) of the Commission's Rules, the Division dismissed Private's application for failure to comply completely in a timely manner with the Division's request for information. Although acknowledging that it had failed to submit all of the requested information, Private requests that its application be reinstated because: (1) a clerical error by its consulting engineer meant that a fourth extension of time was not filed prior to dismissal, (2) it had lost the availability of its originally proposed transmitter site, and (3) it had not obtained a lease or lease option agreement for a new site prior to dismissal.[2]

4. *Discussion.* As of the date of the Division's dismissal action and after requesting three extensions of time, Private still had not submitted all of the information necessary for evaluation of its qualifications to be an MMDS licensee. For example, Private had not submitted a lease, lease option agreement, or other "concrete evidence" to demonstrate the availability of its proposed transmitter site as required by Sec. 21.15(a).[3] For MMDS applications subject to the Commission's lottery proceedings, a demonstration of reasonable assurance of site availability is sufficient prior to the lottery. However,once the lottery is held, a fully-executed lease, lease option agreement, or other concrete evidence of site availability must be submitted.[4]

5. In addition, Private failed to submit the requested financial certification.[5] *See Fortuna Systems Corp.*, 3 FCC Rcd 5122, 5123 (Comm. Car. Bur. 1988). Also, Private failed to comply with the request to submit a Section 21.902(i) ITFS interference analysis. At the time of the dismissal, Section 21.902(i) required MMDS applicants to submit, prior to receiving construction authorization, and at such time as the Commission requested it, an analysis demonstrating that the proposed MMDS facilities would not cause harmful interference to existing cochannel or adjacent-channel ITFS stations within 50 miles of the MMDS station's proposed transmitter site, or alternatively, a consent statement from the ITFS licensee. By the express language of this rule, an MMDS applicant must submit an ITFS interference analysis at such time as the Commission requests it. Despite the specific request that this analysis be

[1] The deficiencies cited were the absence of: (1) information necessary for compliance with FCC and Federal Aviation Administration (FAA) air navigation hazard compliance program, pursuant to 47 C.F.R. Secs. 17.4(f) and 21.15(d); (2) a financial certification, pursuant to 47 C.F.R. Sec. 21.17; (3) an Instructional Television Fixed Service (ITFS) interference analysis, pursuant to 47 C.F.R. Sec. 21.902(i); and (4) a lease or lease option agreement, pursuant to 47 C.F.R. Sec. 21.15(a).

[2] An opposition and informal objection to Private's reconsideration petition was filed by United States Wireless Cable, Inc. (Wireless) almost three (3) years after the petition was filed. Private filed a "response" to the opposition and Wireless filed a "reply" to the response. Pursuant to 47 C.F.R. Sec. 1.106(g), an opposition must be filed within ten (10) days after the reconsideration petition is filed, and a reply must be filed within seven (7) days of the due date for the opposition. No fourth pleading is authorized. We have not separately discussed the issues raised in the opposition, response and reply.

[3] Even if Private was not required to comply with the requirements of Section 21.15(a), it was required, pursuant to Sec. 21.13(c), to submit a lease or lease option agreement after the Division directed it to do so. Section 21.13(a) provides, *inter alia:* "In addition to the general application requirements of Secs. 21.13 through 21.17 of this part, applicants shall submit any additional documents, exhibits, or signed written statements of fact: ... (2) As the Commission, at any time after the filing of an application ... may require from any applicant ... to enable it to determine whether a radio authorization should be granted...."

[4] *Revision of Part 21 of The Commission's Rules*, 2 FCC Rcd 5713, 5721 (1987) (Where there is a lottery "it shall be sufficient if the application adequately demonstrates reasonable assurance of the availability of the site. A license will not be granted, however, until concrete evidence of site availability is submitted." *Id.*)

[5] Even if Private was not required to comply with the requirements of Section 21.17, it was required, pursuant to Section 21.13(c), to submit in a timely manner the required financial certification after the Division directed it to do so.

submitted by a specified date. Private failed to do so. *See Video/Multipoint, Inc.*, 6 FCC Rcd 5125, 5126 (Comm. Car. Bur. 1991).

6. Private had a duty to submit curative amendments to its application within thirty days of the Division's written request, or to obtain an extension of time. *VisionAire, Inc.*, 5 FCC Rcd 1952 (Comm. Car. Bur. 1990). Its failure to submit curative amendments for more than five (5) months substantially impeded the expeditious offering of MMDS at Lubbock. Also, Private's failure to respond in a timely manner to the Division's request for information hindered the discharge of the Commission's statutorily-imposed duties under Title III of the Communication's Act. *See By Direction of the Commission Letter to US West*, 60 Rad. Reg. 2d 8, 9 (1985). At the time of the dismissal, Private had not provided the required financial certification, the ITFS interference analysis, or the required lease or lease option agreement. The Division was not in a position, therefore, to complete evaluation of Private's MMDS station proposal and its qualifications to be an MMDS licensee. *Multi-Point Television Distributors, Inc.*, 5 FCC Rcd 519, 520 (Comm. Car. Bur. 1990)

7. *Conclusion and Ordering Clause.* Having carefully considered the arguments and evidence presented, we find that dismissal of this application for failure to comply with the Division's request for information was proper, reinstatement of the application is not justified, and reconsideration is not warranted. Accordingly, IT IS ORDERED that the petition for reconsideration filed by Private Networks, Inc. regarding the above-referenced MMDS application IS DENIED. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. *See* 47 C.F.R. Secs. 1.4(b), 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Application of

Krisar, Inc. File No. 6677-CM-P-83

For Authority to Construct and Operate
Multichannel Multipoint Distribution
Service station on the F-group
channels at Lubbock, Texas

ORDER ON RECONSIDERATION

Adopted: December 3, 1992, Released: December 9, 1992

By the Chief, Domestic Facilities Division:

1. *Introduction.* Krisar, Inc. filed a petition for reconsideration of the dismissal by the Domestic Facilities Division (Division) on delegated authority of its application for authority to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the F-group channels at Lubbock, Texas, and requested reinstatement of its application. An opposition was filed.

2. *Background.* As the result of a Commission lottery, the above-referenced application was selected for qualification review. Subsequently, Division staff initiated qualification review of this application pursuant to 47 C.F.R. Sec. 21.32. Upon examination, the application was found to contain several deficiencies that precluded the staff from making a finding that Krisar was legally, technically, financially, and otherwise qualified to be a licensee, and that a grant of its application would serve the public interest. Krisar was notified by letter of these deficiencies and provided an opportunity to cure them within thirty (30) days of the date of the letter.[1] Krisar was also advised that failure to file the requested information within thirty days could result in the dismissal of its application.

3. Krisar provided some, but not all, of the information necessary to complete processing of its application. Pursuant to Sections 21.13(c), 21.20(d) and 21.28(d), the Division dismissed Krisar's application for failure to comply completely in a timely manner with the Division's request for information. On reconsideration, Krisar argues that its application should be reinstated because: (1) a reasonable assurance statement of site availability had been provided; and (2) Krisar had declared to the Commission that it wished to delay preparation of the required Section 21.902(i) ITFS interference analysis because it would be expensive, time consuming, and premature until the Commission had decided to grant its application.[2]

4. *Discussion.* As of the date of the Division's dismissal action, Krisar still had not submitted all of the information necessary for evaluation of its qualifications to be an MMDS licensee. For example, Krisar had not submitted a lease, lease option agreement, or other "concrete evidence" to demonstrate the availability of its proposed transmitter site as required by Sec. 21.15(a).[3] For MMDS applications subject to the Commission's lottery proceedings, a demonstration of reasonable assurance of site availability is sufficient prior to the lottery. However, once the lottery is held, a fully-executed lease, lease option agreement, or other concrete evidence of site availability must be submitted.[4] *Video/Multipoint, Inc.*, 6 FCC Rcd 5125, 5126 (Comm. Car. Bur. 1991).

5. In addition, Krisar failed to comply with the request to submit a Section 21.902(i) ITFS interference analysis. At the time of the dismissal, Section 21.902(i) required MMDS applicants to submit, prior to receiving construction authorization, and at such time as the Commission requested it, an analysis demonstrating that the proposed MMDS facilities would not cause harmful interference to existing cochannel or adjacent-channel ITFS stations within 50 miles of the MMDS station's proposed transmitter site, or alternatively, a consent statement from the ITFS licensee. By the express language of this rule, an MMDS applicant must submit an ITFS interference analysis at such time as the Commission requests it. Despite the specific request that this analysis be submitted by a specified date, Krisar failed to do so. *See Fortuna Systems Corp.*, 3 FCC Rcd 5122, 5123 (Comm. Car. Bur. 1988).

6. Krisar's response concerning its financial qualification demonstration was also inadequate. Krisar acknowledged that the deficiency letter stated that its previously-submitted financial showing was insufficient, but decided to rely on a financial statement of an individual submitted in 1983 which shows liquid assets of $30,000, offset by more than $59 million in liabilities. Krisar refused to submit any financial data more recent than 1983. At the time of the deficiency letter, Section 21.17 required balance statements

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[1] The deficiencies cited were the absence of: (1) a lease or lease option agreement, pursuant to 47 C.F.R. Sec. 21.15(a); (2) current financial qualification data, pursuant to 47 C.F.R. Sec. 21.17; (3) justification for granting an exception to the major amendment rules, pursuant to 47 C.F.R. Secs. 21.23 and 21.31; and (4) an analysis demonstrating a lack of harmful interference to Instructional Television Fixed Service (ITFS) licensees, pursuant to 47 C.F.R. Sec. 21.902(i).

[2] Almost three years after Krisar's application was dismissed, United States Wireless Cable, Inc. (Wireless) filed an objection to Krisar's petition for reconsideration. Pursuant to Section 1.106(g), an opposition must be filed within ten (10) days after the reconsideration petition is filed. The issues raised in Wireless' opposition are not separately discussed herein.

[3] Even if Krisar was not required to comply with the requirements of Section 21.15(a), it was required, pursuant to Sec. 21.13(c), to submit a lease or lease option agreement after the Division directed it to do so. Section 21.13(a) provides, *inter alia:* "In addition to the general application requirements of Secs. 21.13 through 21.17 of this part, applicants shall submit any additional documents, exhibits, or signed written statements of fact: ... (2) As the Commission, at any time after the filing of an application ... may require from any applicant ... to enable it to determine whether a radio authorization should be granted...."

[4] *Revision of Part 21 of The Commission's Rules*, 2 FCC Rcd 5713, 5721 (1987) (Where there is a lottery "it shall be sufficient if the application adequately demonstrates reasonable assurance of the availability of the site. A license will not be granted, however, until concrete evidence of site availability is submitted." *Id.*)

to be current within 90 days. Thus, Krisar's out-of-date financial data failed to comply with Section 21.17 and the Division's specific request for more current financial data.

7. Krisar had a duty to submit curative amendments to its application within thirty days of the Division's written request, or to obtain an extension of time. *VisionAire, Inc.*, 5 FCC Rcd 1952 (Comm. Car. Bur. 1990). Its failure to submit all of the curative amendments for more than three (3) years substantially impeded the expeditious offering of MMDS at Lubbock. Also, Krisar's failure to respond in a timely manner to the Division's request for information hindered the discharge of the Commission's statutorily-imposed duties under Title III of the Communication's Act. *By Direction of the Commission Letter to US West*, 60 Rad. Reg. 2d 8, 9 (1985). At the time of the dismissal, Krisar had not provided a lease or lease option agreement, current financial qualification data, and an ITFS interference analysis. The Division was not in a position, therefore, to complete evaluation of Krisar's MMDS station proposal and its qualifications to be an MMDS licensee. *Multi-Point Television Distributors, Inc.*, 5 FCC Rcd 519, 520 (Comm. Car. Bur. 1990).

8. *Conclusion and Ordering Clause.* Having carefully considered all of the arguments and evidence presented, we find that dismissal of this application for failure to comply with the Division's request for information was proper, reconsideration of that action is not warranted, and reinstatement of the application is not justified. Accordingly, IT IS ORDERED that the petition for reconsideration and reinstatement filed by Krisar, Inc. regarding the above-referenced MMDS application IS DENIED. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. *See* 47 C.F.R. Secs. 1.4(b), 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Application of

Broadcast Data Corporation File No. 2172-CM-P-83

For Authority to Construct and Operate
a Multichannel Multipoint Distribution
Service station on the F-group
channels at Idaho Falls, Idaho

ORDER ON RECONSIDERATION

Adopted: December 3, 1992; Released: December 9, 1992

By the Chief, Domestic Facilities Division:

1. *Introduction.* Broadcast Data Corporation (Broadcast) filed a petition for reconsideration of the dismissal by the Domestic Facilities Division (Division) on delegated authority of its application for authority to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the F-group channels at Idaho Falls, Idaho, and requested reinstatement of its application.

2. *Background.* As the result of a Commission lottery, the above-referenced application was selected for qualification review. Subsequently, Division staff initiated a qualification review of the application pursuant to 47 C.F.R. Sec. 21.32, and upon examination, found the application contained several deficiencies that precluded the staff from making a finding that Broadcast was legally, technically, financially, and otherwise qualified to be a licensee, and that a grant of its application would serve the public interest. Broadcast was notified by letter of these deficiencies and provided an opportunity to cure them within thirty (30) days of the date of the letter.[1] Broadcast was also advised in the deficiency letter that failure to file the requested information within thirty days could result in the dismissal of its application. Pursuant to 47 C.F.R. Secs. 21.13(c), 21.20(d) and 21.28(d), subsequently the Division dismissed Broadcast's application for its failure to comply in a timely manner with the Division's request for information.

3. *Petition.* On reconsideration, Broadcast states that it "admittedly was late in responding due to confusion caused by several changes in engineering firms. ... |Broadcast| regrets the late filing, and procedures have been changed to guarantee that a letter from the Commission will never be sent to any party other than at |Broadcast's| direction and under |Broadcast's| supervision."

4. *Discussion.* The dismissal letter stated that Broadcast had provided none of the requested information. However, a further search of Commission records reveals that a least some of the requested information was provided by Broadcast prior to dismissal. Even though the dismissal letter incorrectly stated that Broadcast filed no response to the deficiency letter, this is harmless error because Broadcast, in response to the deficiency letter, filed some, but not all, of the information necessary to determine its qualifications to be an MMDS licensee. *Fortuna Systems Corp.*, 3 FCC Rcd 5122, 5123 (Comm. Car. Bur. 1988)(hereinafter referred to as *Fortuna)*.

5. However, despite the deficiency letter statement that "FCC has no record of proposed antenna structure" and the request for Broadcast to "submit a copy of the FAA study." Broadcast failed to do so. Thus, Broadcast's response failed to comply with the Division's request for a copy of the required FAA study.[2] Broadcast's financial qualification submission was also inadequate. Broadcast filed a two-year-old financial statement, which showed liquid assets of $114,115, offset by liabilities of $1,181,275. At the time of Broadcast's submission, Section 21.17 required financial statements to be current within 90 days. Thus, Broadcast's response failed to comply with Section 21.17 and the Division's specific request for current financial data. In addition, Broadcast makes no claim that it submitted the requested tariff schedule. *See Video/Multipoint, Inc.*, 6 FCC Rcd 5125, 5126 (Comm. Car. Bur. 1991).

6. As of the date of the Division's dismissal action, Broadcast still had not submitted all of the information necessary for evaluation of itsqualifications to be an MMDS licensee. Broadcast had a duty to submit curative amendments for its application within thirty days of the Division's written request, or to obtain an extension of time. *VisionAire, Inc.*, 5 FCC Rcd 1952 (Comm. Car. Bur. 1990). Its failure to submit curative amendments for more than four months substantially impeded the expeditious offering of MMDS at Idaho Falls. *Fortuna*, 3 FCC Rcd at 5123. Also, Broadcast's failure to respond in a timely manner to the Division's request for information hindered the discharge of the Commission's statutorily-imposed duties under Title III of the Communication's Act. *By Direction of the Commission Letter to US West*, 60 Rad. Reg. 2d 8, 9 (1985). At the time of the dismissal, Broadcast had not provided the required FAA study, the required current financial qualification data, and the required tariff statement. The Division was not in a position, therefore, to complete evaluation of Broadcast's MMDS station proposal

[1] The deficiencies cited in the letter were the absence of: (1) a lease or lease option agreement, pursuant to 47 C.F.R. Sec. 21.15(a); (2) a Federal Aviation Administration (FAA) study to demonstrate air navigation hazard program compliance, as required by 47 C.F.R. Secs. 17.4(f) and 21.15(d); (3) current financial qualification data, pursuant to 47 C.F.R. Sec. 21.17; (4) a tariff schedule, pursuant to Item 29 of FCC Form 435 and 47 C.F.R. Sec. 21.13; and (5) an analysis demonstration a lack of harmful interference to Instructional Television Fixed Service (ITFS) licensees, pursuant to 47 C.F.R. Sec. 21.902(i).

[2] Even if Broadcast was not required to comply with the requirements of Sections 17.4 and 21.15(d), it was required, pursuant to Sec. 21.13(c), to submit an FAA study after the Division directed it to do so. Section 21.13(a) provides, *inter alia*,: "In addition to the general application requirements of Secs. 21.13 through 21.17 of this part, applicants shall submit any additional documents, exhibits, or signed written statements of fact: ... (2) As the Commission, at any time after the filing of an application ... may require from any applicant ... to enable it to determine whether a radio authorization should be granted...."

and its qualifications to be an MMDS licensee. *Multi-Point Television Distributors, Inc.*, 5 FCC Rcd 519, 520 (Comm. Car. Bur. 1990).

7. *Conclusion and Ordering Clause.* Having carefully considered all of the arguments and evidence presented, we find that the dismissal of this application for failure to comply with the Division's request for information was proper, reconsideration of the action is not warranted, and reinstatement of the application is not justified. Accordingly, IT IS ORDERED that the petition for reconsideration and reinstatement filed by Broadcast Data Corporation regarding the above-referenced MMDS application IS DENIED. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. *See* 47 C.F.R. Secs. 1.4(b), 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Application of

Mettler Communications, Inc. File No. 8246-CM-P-83

For Authority to Construct and Operate
a Multichannel Multipoint Distribution
Service station on the F-group
channels at Biloxi, Mississippi

ORDER ON RECONSIDERATION

Adopted: December 3, 1992; Released: December 9, 1992

By the Chief, Domestic Facilities Division:

1. *Introduction.* Mettler Communications, Inc. (Mettler) requested reconsideration of the dismissal by the Domestic Facilities Division (Division) on delegated authority of its application for authority to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the F-group channels at Biloxi, Mississippi, and requested reinstatement of its application.

2. *Background.* As the result of a Commission lottery, the above-referenced application was selected for qualification review. Subsequently, Division staff initiated a qualification review of the application pursuant to 47 C.F.R. Sec. 21.32. Upon examination, the application was found to contain several deficiencies that precluded the staff from making a finding that Mettler was legally, technically, financially, and otherwise qualified to be a licensee, and that a grant of its application would serve the public interest. Mettler was notified by letter of these deficiencies and provided an opportunity to cure them within thirty (30) days of the date of the letter.[1] Mettler was also advised in the deficiency letter that failure to file the requested information within thirty days could result in the dismissal of its application.

3. Of these deficiencies, Mettler provided only a financial certification. Pursuant to Sections 21.13(c), 21.20(d) and 21.28(d) of the Commission's Rules, the Division dismissed Mettler's application for failure to comply completely in a timely manner with the Division's request for information. While admitting its failure to submit all of the requested information, Mettler, on reconsideration, asserts that its application should be reinstated because: (1) it would have been unreasonable to expect Mettler to expend time and money on its Biloxi application until after all petitions to deny Mettler applications in other markets had been resolved, and (2) it entered into a lease/option agreement with a programmer, who can be expected to develop wireless cable service in Biloxi expeditiously. In addition, Mettler states: "The spectre of anti-competitive conduct on the part of program suppliers and cable companies toward MMDS entities has triggered hearings on Capitol Hill and at the FCC. The lack of programming has had the effect of discouraging investors from providing the necessary support to the wireless cable industry." Petition at 2.

4. *Discussion.* As of the date of the Division's dismissal action, Mettler still had not submitted all of the information necessary for evaluation of its qualifications to be an MMDS licensee. For example, Mettler had not submitted a lease, lease option agreement, or other "concrete evidence" to demonstrate the availability of its proposed transmitter site, as required by Section 21.15(a).[2] For MMDS applications subject to the Commission's lottery proceedings, a demonstration of reasonable assurance of site availability is sufficient prior to the lottery. However, once the lottery is held, a fully-executed lease, lease option agreement, or other concrete evidence of site availability must be submitted.[3] *Video/Multipoint, Inc.*, 6 FCC Rcd 5125, 5126 (Comm. Car. Bur. 1991).

5. In addition, Mettler failed to comply with the request to submit the Section 21.902(i) ITFS interference analysis. At the time of the dismissal, Section 21.902(i) required MMDS applicants to submit, prior to receiving construction authorization, and at such time as the Commission requested it, an analysis demonstrating that the proposed MMDS facilities would not cause harmful interference to existing cochannel or adjacent-channel ITFS stations within 50 miles of the MMDS station's proposed transmitter site, or alternatively, a consent statement from the ITFS licensee. By the express language of this rule, an MMDS applicant must submit an ITFS interference analysis at such time as the Commission requests it. Despite the specific request that this analysis be submitted by a specified date, Mettler failed to submit the required analysis for more than a year after he was directed to do so by the Division. *See Fortuna Systems Corp.*, 3 FCC Rcd 5122, 5123 (Comm. Car. Bur. 1988).

6. Mettler had a duty to submit curative amendments to its application within thirty days of the Division's written request, or to obtain an extension of time.[4] *VisionAire, Inc.*, 5 FCC Rcd 1952 (Comm. Car. Bur. 1990). Its failure to submit curative amendments for more than a year substan-

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[1] The deficiencies cited in the letter were the absence of: (1) a lease or lease option agreement, pursuant to 47 C.F.R. Sec. 21.15(a); (2) a financial certification pursuant to 47 C.F.R. Sec. 21.17; and (3) an analysis demonstrating a lack of harmful interference to Instructional Television Fixed Service (ITFS) licensees pursuant to 47 C.F.R. Sec. 21.902(i).

[2] Even if Mettler was not required to comply with the requirements of Section 21.15(a), it was required, under Sec. 21.13(c), to submit a lease or lease option agreement after the Division directed it to do so. Section 21.13(a) provides, *inter alia*, : "In addition to the general application requirements of Secs. 21.13 through 21.17 of this part, applicants shall submit any additional documents, exhibits, or signed written statements of fact: ... (2) As the Commission, at any time after the filing of an application ... may require from any applicant ... to enable it to determine whether a radio authorization should be granted...."

[3] *Revision of Part 21 of The Commission's Rules*, 2 FCC Rcd 5713, 5721 (1987) (Where there is a lottery "it shall be sufficient if the application adequately demonstrates reasonable assurance of the availability of the site. A license will not be granted, however, until concrete evidence of site availability is submitted." *Id.*)

[4] Mettler "also claims that [the] delay in responding to the deficiency letter was, in part, due to the time and resources it devoted to the resolution of issues raised in petitions to deny filed against its applications in other markets. We do not find

tially impeded the expeditious offering of MMDS at Biloxi. Also, Mettler's failure to respond in a timely manner to the Division's requests for information hindered the discharge of the Commission's statutorily-imposed duties under Title III of the Communication's Act. *By Direction of the Commission Letter to US West*, 60 Rad. Reg. 2d 8, 9 (1985). At the time of the dismissal, Mettler had not provided the required ITFS interference analysis and the required lease or lease option agreement. The Division was not in a position, therefore, to complete evaluation of Mettler's MMDS station proposal and its qualifications to be an MMDS licensee. *Multi-Point Television Distributors, Inc.*, 5 FCC Rcd 519, 520 (Comm. Car. Bur. 1990).

7. *Conclusion and Ordering Clause.* Having carefully considered the arguments and evidence presented, we find that the dismissal of this application for failure to comply with the Division's requests for information was proper, reconsideration of that action is not warranted, and reinstatement of the application is not justified.[5] Accordingly, IT IS ORDERED that the request for reconsideration and reinstatement filed by Mettler Communications, Inc. regarding the above-referenced MMDS application IS DENIED. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. *See* 47 C.F.R. Secs. 1.4(b), 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

this justifies the applicant's delay in responding to the Division's deficiency request or justifies [its] failure to file a request for an extension of time to submit the requested information." *Multi-Point Television Distributors, Inc.*, 5 FCC Rcd 590, 591 n.5 (Comm. Car. Bur. 1990).

[5] In the same document with its reconsideration request, Mettler requested a stay. Due to our disposition of Mettler's request for reconsideration, we hereby dismiss its request for stay as moot.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Application of

Multi-Point Television Distributors, Inc.
For Authority to Construct and Operate
a Multichannel Multipoint Distribution
Service station on the E-group
channels at Milwaukee, Wisconsin,

File No. 9674-CM-P-83

ORDER ON RECONSIDERATION

Adopted: December 3, 1992; Released: December 9, 1992

By the Chief, Domestic Facilities Division:

1. *Introduction.* Multi-Point Television Distributors, Inc. (Multi-Point) filed a petition for reconsideration of the dismissal by the Domestic Facilities Division (Division) on delegated authority of its application for authority to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the E-group channels at Milwaukee, Wisconsin, and requested reinstatement of its application.

2. *Background.* As the result of a Commission lottery, the above-referenced application was selected for qualification review. Subsequently, Division staff initiated a qualification review of the application, pursuant to 47 C.F.R. Sec. 21.32. Upon examination, the application was found to contain several deficiencies that precluded the staff from making a finding that Multi-Point was legally, technically, financially, and otherwise qualified to be a licensee, and that a grant of its application would serve the public interest. The applicant was notified by letter of these deficiencies and provided an opportunity to cure them within thirty (30) days of the date of the letter.[1] Multi-Point was also advised in the deficiency letter that failure to file the requested information within thirty days could result in the dismissal of its application.

3. Multi-Point provided some, but not all, of the requested information. Pursuant to Sections 21.13(c), 21.20(d) and 21.28(d) of the Commission's Rules, the Division dismissed by letter Multi-Point's application for failure to comply completely in a timely manner with the Division's request for information. While admitting that all of the requested information had been submitted prior to dismissal, Multi-Point, on reconsideration, asks that its application be reinstated because: (1) it had filed an ITFS interference analysis prior to dismissal; and (2) a sublease for the proposed transmitter site was not filed prior to dismissal due to administrative oversight.

4. *Discussion.* As of the date of the Division's dismissal action, Multi-Point still had not submitted all of the information necessary for evaluation of its qualifications to be an MMDS licensee. For example, Multi-Point had not submitted a lease, lease option agreement, or other "concrete evidence" to demonstrate the availability of its proposed transmitter site, as required by Section 21.15(a).[2] For MMDS applications subject to the Commission's lottery proceedings, a demonstration of reasonable assurance of site availability is sufficient prior to the lottery. However, once the lottery is held, a fully-executed lease, option agreement, or other concrete evidence of site availability must be submitted.[3] *Video/Multipoint, Inc.*, 6 FCC Rcd 5125, 5126 (Comm. Car. Bur. 1991). We note that, despite Multi-Point's claim of administrative error, it did not sign the sublease until approximately six weeks after dismissal.

5. In addition, Multi-Point failed to comply with the request to submit the Section 21.902(i) ITFS interference analysis. At the time of the dismissal, Section 21.902(i) required MMDS applicants to submit, prior to receiving construction authorization, and at such time as the Commission requested it, an analysis demonstrating that the proposed MMDS facilities would not cause harmful interference to existing cochannel or adjacent-channel ITFS stations within 50 miles of the MMDS station's proposed transmitter site, or alternatively, a consent statement from the ITFS licensee."[4] By the express language of this rule, an MMDS applicant must submit an ITFS interference analysis at such time as the Commission requests it. Despite the specific request that this analysis be submitted by a specified date, Multi-Point failed to submit the required analysis at the time it was requested. *See Fortuna Systems Corp.*, 3 FCC Rcd 5122, 5123 (Comm. Car. Bur. 1988).

6. Multi-Point had a duty to submit curative amendments to its application within thirty days of the Division's written request, or to obtain an extension of time. *Vision-Aire, Inc.*, 5 FCC Rcd 1952 (Comm. Car. Bur. 1990). Its failure to submit curative amendments for almost four years substantially impeded the expeditious offering of MMDS at Milwaukee. Also, Multi-Point's failure to respond in a timely manner to the Division's request for information hindered the discharge of the Commission's

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[1] The deficiencies cited in the letter were the absence of: (1) a lease or lease option agreement, pursuant to 47 C.F.R. Sec. 21.15(a); and (2) an analysis demonstrating a lack of harmful interference to Instructional Television Fixed Service (ITFS) licensees, pursuant to 47 C.F.R. Sec. 21.902(i).

[2] Even if Multi-Point was not required to comply with the requirements of Section 21.15(a), it was required, under Sec. 21.13(c), to submit a lease or lease option agreement after the Division directed it to do so. Section 21.13(a) provides, *inter alia*,: "In addition to the general application requirements of Secs. 21.13 through 21.17 of this part, applicants shall submit any additional documents, exhibits, or signed written statements of fact: ... (2) As the Commission, at any time after the filing of an application ... may require from any applicant ... to enable it to determine whether a radio authorization should be granted...."

[3] *Revision of Part 21 of The Commission's Rules*, 2 FCC Rcd 5713, 5721 (1987) (Where there is a lottery "it shall be sufficient if the application adequately demonstrates reasonable assurance of the availability of the site. A license will not be granted, however, until concrete evidence of site availability is submitted." *Id.*)

[4] Even if Multi-Point was not required to comply with the requirements of Section 21.902(i), Multi-Point was required, pursuant to Section 21.13(c), to submit the required analysis after the Division directed Multi-Point to do so. *See also* Section 21.13(a)."

statutorily-imposed duties under Title III of the Communication's Act. *By Direction of the Commission Letter to US West,* 60 Rad. Reg. 2d 8, 9 (1985). At the time of the dismissal, Multi-Point had not provided the required ITFS interference analysis and the required lease or lease option agreement. The Division was not in a position, therefore, to complete evaluation of Multi-Point's MMDS station proposal and its qualifications to be an MMDS licensee. *Multi-Point Television Distributors, Inc.,* 5 FCC Rcd 519, 520 (Comm. Car. Bur. 1990).

7. *Conclusion and Ordering Clause.* Having carefully considered the arguments and evidence presented, we find that the dismissal of this application for failure to comply with the Division's requests for information was proper, reconsideration of that action is not warranted, and reinstatement of the application is not justified. Accordingly, IT IS ORDERED that the petition for reconsideration filed by Multi-Point Television Distributors, Inc. regarding the above-referenced MMDS application IS DENIED. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. *See* 47 C.F.R. Secs. 1.4(b), 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TRANSWORLD COMMUNICATIONS (U.S.A.), INC. File No. I-T-C-92-255

For Authority Pursuant to Section 214 of the Communications Act of 1934 to Establish Channels of Communication Between the U.S. and the Russian Federation via the Soviet WSDRN Satellite System for the Provision of International Private Line Video and Associated Audio, Facsimile, Voice and Data Services Not Interconnected with the Public Switched Network

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: November 23, 1992; Released: December 10, 1992

By the Chief, International Facilities Division:

1. The Commission has before it an application filed by Transworld Communications (U.S.A.), Inc. (Transworld) requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, to establish channels of communication between the Russian Federation and the United States via the Russian Loutch satellite, also known as the Western Space Data Relay Network (WSDRN)[1] for the provision of international private line voice, facsimile, video, audio and data services not interconnected with the public switched network. The application was placed on public notice. No comments were received.

2. Transworld states that it is a start-up corporation requesting authorization to operate as an international common carrier for the provision of receive-only private line video, audio and data transmission services, not interconnected with the public switched network, from the WSDRN Loutch satellite system in the Russian Federation, to its U.S. earth station at the Washington International Teleport in Alexandria, Virginia. Transworld asserts that operation of the WSDRN Loutch satellite system will foster technological and scientific cooperation with the Russian Federation and will help to rebuild Russia's economic infrastructure and encourage conversion of Soviet military technology to commercial use. Transworld also contends that the Loutch satellite system offers a reliable, cost-effective and uniquely capable means of facilitating video and data transmission between Russia and the U.S. and that these capabilities have attracted significant interest from companies that have a need for international satellite delivery alternatives.

3. Transworld states that it does not anticipate any economic harm to INTELSAT as a result of its proposed use of WSDRN Loutch satellite. Transworld, therefore, requests that the Commission, in coordination with other appropriate U.S. government agencies and Comsat, initiate and complete consultation with INTELSAT pursuant to Article XIV(d) of the INTELSAT Agreement for Transworld's proposed use of WSDRN Loutch satellite. Transworld also requests that any technical consultation which may be required be initiated immediately. Transworld asserts that its provision of international private line services will comply with the rules governing the use and operation of separate satellite systems insofar as these rules prohibit separate systems from carrying public switched traffic.[2] Transworld states that it will not interconnect the international private line circuits it provides with the public switched telephone network.

I. DISCUSSION

4. The subject application proposes the use of non-INTELSAT space segment facilities to provide international private line voice, data, facsimile, audio, video with associated audio services not interconnected with the public switched network. The Satellite Act provides for U.S. participation and support of the INTELSAT global commercial satellite system. Although the United States is a Party to the INTELSAT Agreement and is committed to a strong, viable INTELSAT system, the Satellite Act clearly does not require or contemplate the sole use of INTELSAT to satisfy U.S. requirements for international satellite services. It specifically provides for the creation of additional satellite systems if ". . . required to meet the unique governmental needs or if otherwise required in the national interest." 47 U.S.C. §701(d).[3] The Executive Branch determines whether the use of non-INTELSAT facilities is in the national interest.[4]

5. In previous applications involving use of the Intersputnik system, the State Department has provided the Commission with conditions upon which the Commission may authorize the use of the Intersputnik system for private line service consistent with U.S. foreign policy and the national interest.[5] The State Department supports authoriz-

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[1] The WSDRN Loutch Satellite is located at 16^0 West Longitude.

[2] Permissible Service of Separate Satellite Systems, FCC 92-95, (released April 13, 1992); Establishment of Satellite Systems Providing International Communications, 101 F.C.C. 2d 1046 (1985) ("*Separate Systems Order*"), *recon.*, 61 R.R. 2d 649 (1986), *further recon.*, 1 FCC Rcd 439 (1986).

[3] Additionally, Congress has declared it to be U.S. policy ". . . to make available to consumers a variety of communications satellite services utilizing space segment facilities of INTELSAT and any additional such facilities which are found to be in the national interest . . ." and which are technically compatible with and avoid significant economic harm to the INTELSAT system. Pub. L. No. 99-93, 99 Stat. 425, §146, Aug. 16, 1985.

[4] Letter from George P. Schultz, Secretary of State, and Malcolm Baldridge, Secretary of Commerce, to Mark S. Fowler, Chairman, Federal Communications Commission (Nov. 28, 1984).

[5] Letter from Ambassador Bradley P. Holmes, Department of State to Chairman Alfred C. Sikes, Federal Communications Commission (Nov. 21, 1990).

ing private line service as proposed in the previous applications. However, because it is concerned that commercial satellite systems cannot effectively engage in price competition with non-commercial systems, the State Department requests that the authorizations be granted subject to review after six months by the Commission and the Executive Branch. The State Department believes that the six month review will enable a future examination of potential migration of traffic from commercial systems, as well as a review of any intervening market mechanisms which might obviate any existing concerns. Although the WSDRN Loutch satellite system is separate from the Intersputnik system, we believe those same conditions imposed on the Intersputnik system should be applicable here.

6. We determine here that the applicant has satisfied the public interest standard of the Communications Act of 1934, as amended, 47 U.S.C. §214 and 47 U.S.C. §301 *et seq.* , and we grant its application subject to *inter alia*, the conditions set forth by the Executive Branch. The applicant proposes to use the WSDRN Loutch satellite system for the provision of international private line services not interconnected with the public switched network between the U.S. and the Russian Federation. Under similar circumstances, the Commission has previously authorized the use of the Intersputnik system to provide television news coverage and private line service between the U.S. and the former U.S.S.R. and Eastern European countries which are not members of INTELSAT.[6] Further, the State Department has informed the Commission that U.S. obligations under the INTELSAT Agreement have been met since INTELSAT has favorably consulted the provision of non-switched services via the WSDRN Loutch satellite system.[7] In light of these circumstances, we find that the limited use of WSDRN Loutch satellite system proposed herein, subject to the conditions provided by the State Department, will serve the public interest.

II. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. §214, the application of Transworld Communications (U.S.A.), Inc. (File No. I-T-C-92-255) IS GRANTED, and the applicant is authorized to establish channels of communications, via the WSDRN Loutch satellite system between Transworld's appropriately licensed earth station located at Washington International Teleport in Alexandria, Virginia,[8] and the Russian Federation, for the provision of *receive-only* international private line audio, video program with associated audio, facsimile, and other voice and data services not interconnected with the public switched network.[9]

8. IT IS FURTHER ORDERED that the initial total number of circuits authorized herein is two (2) 36-MHz video channels, and two (2) T-1s (1.544 Mbps) private line circuits.

9. IT IS FURTHER ORDERED that the continued effectiveness of this authorization is conditioned on the outcome of the review after six months by the State Department and the Commission as specified in paragraph 11 of the Commission's Order DA 91-621 (*See* 6 FCC Rcd 2932 (1991)). If the Commission is notified by the State Department that the continued use of the WSDRN Loutch satellite is no longer in the national interest, then this authorization will be subject to cancellation.

10. IT IS FURTHER ORDERED that Transworld is authorized herein to provide receive-only international private line audio, video program with associated audio, facsimile, and other voice and data services not interconnected to the public switched network using its appropriately licensed earth station at the Washington International Teleport in Alexandria, Virginia, which earth station is authorized to communicate with the WSDRN Loutch satellite system at 16[0] West Longitude. Should the applicant wish to construct additional earth station facilities to provide these services, an appropriate application under Title III of the Communications Act will be required.

11. IT IS FURTHER ORDERED that any authorization of Transworld to provide private lines is limited to the provision of such private lines only between the Russian Federation and the United States -- that is, private lines which originate in the Russian Federation and terminate in the United States. In addition, Transworld may not -- and Transworld's tariff must state that Transworld's customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international basic telecommunications services, including switched voice services, unless authorized to do so by the Commission upon a finding that the Russian Federation affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates*, Phase II, First Report and Order, 7 FCC Rcd 559 (1991), *petitions for reconsideration pending.*

12. IT IS FURTHER ORDERED that neither the applicant nor any persons or companies controlling it or controlled by it shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which the applicant or any persons or companies controlling it or controlled by it are parties.

13. IT IS FURTHER ORDERED that the applicant shall submit monthly reports detailing the number and capacity of private line circuits in use over the WSDRN Loutch satellite system. The reports shall also set forth the number of private line circuits Transworld has in use over each communications system for the countries served by the WSDRN Loutch satellite system. These reports shall be filed no later than the 20th day of each month and shall include the required information for the previous month.

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[6] IDB Communications Group, Inc. *et al.*, 6 FCC Rcd 2932 (1991) and 7 FCC Rcd 1599 (1992); CICI, Inc., 6 FCC Rcd 4289 (1991).

[7] Letter from Steven W. Lett, Deputy Director for Satellite and Cable Policy, Bureau of International Communications and Information Policy, Department of State to George S. Li, Chief, International Facilities Division, Common Carrier Bureau, Federal Communications Commission (Sept. 18, 1992). *See also* BG-94-3 and BG-94-86.

[8] FCC File No. CSG-92-141-P/L.

[9] This authorization is not to be construed as permitting the provision of any service between earth stations located within the United States.

14. IT IS FURTHER ORDERED that the applicants shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

15. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic, required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

16. IT IS FURTHER ORDERED that the applicant shall file a separate Section 214 application for the use of any additional circuits over separate satellite systems.

17. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between Transworld and the foreign correspondents in the Russian Federation. A copy of each of the agreements shall be filed with the Commission within 30 days of its execution.

18. This order is issued pursuant to Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

IDB COMMUNICATIONS GROUP, INC. File No. I-T-C-92-178

For Authority Pursuant to Section 214 of the Communications Act of 1934 to Establish Channels of Communication Between the U.S. and the former U.S.S.R. via the Soviet Statsionar 11 Satellite System for the Provision of International Television Service and Private Line Services Not Interconnected with the Public Switched Network

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: November 23, 1992; Released: December 10, 1992

By the Chief, International Facilities Division:

1. The Commission has before it an application filed by IDB Communications Group, Inc. (IDB) requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, to establish channels of communication between the United States and the countries comprising the former Union of Soviet Socialist Republics[1] via the Soviet Statsionar 11 Satellite System[2] for the provision of international television service and private line services not interconnected with the public switched network. The application was placed on public notice. No comments were received.

2. IDB is an international common carrier authorized to provide a range of international services, including International Business Service (IBS), television, and program audio services between the U.S. and the former Soviet Union and certain Eastern European countries. IDB submits that the fast-paced changes in the former Soviet Union during the past several years have led to a skyrocketing demand for high quality telecommunications services between the U.S. and countries formerly comprising the Soviet Union for news, sports and entertainment programming between these two countries. In addition, IDB notes that the growth of East-West commerce has greatly increased the demand by U.S. and other business enterprises for reliable corporate communications between the U.S. and the European nations comprising the former Soviet Union.

3. IDB believes that the present facilities between the U.S. and the former Soviet Union are inadequate because there is insufficient ground facilities to access INTELSAT and insufficient transponder capacity for certain services at certain times. IDB asserts that the ability to use Statsionar 11 will provide additional circuits on an alternate and reliable facility, and will increase route diversity. Also, IDB asserts that the ability to use Statsionar 11 will permit the provision of international television services and private line communications to expand rapidly, as there will be substantially reduced capital investment demands on the telecommunications ministries of the successor nations to the U.S.S.R and on private industry. Because Statsionar 11 earth stations and technical equipment are already installed and operating throughout the former Soviet Union, IDB believes it can provide cost-effective television transmission and private line communications in a very short time to the cities which do not have INTELSAT earth station facilities. Consequently, IDB states that using Statsionar 11 will obviate, at least in the short run, the need to construct costly new INTELSAT earth station facilities which would not be built in the near future because the level of traffic could not justify the construction and operation costs.

4. IDB states that the facilities covered by the instant application will be used to provide communications between the U.S. and the eastern portion of the former U.S.S.R. These services will supplement areas which are now minimally served by IDB and will also supplement existing INTELSAT facilities serving the former U.S.S.R. IDB requests that the Commission, in coordination with other appropriate U.S. government agencies and Comsat, initiate and complete consultation with INTELSAT pursuant to Article XIV(d) of the INTELSAT Agreement for IDB's proposed use of Statsionar 11. IDB requests that any technical consultation which may be required be initiated immediately.

5. IDB asserts that its provision of international television and private line service will comply with the rules governing the use and operation of separate satellite systems insofar as these rules prohibit separate systems from carrying public switched traffic.[3] IDB states that it will not interconnect the international television or private line circuits it provides with the Public Switched Telephone Network.

I. DISCUSSION

6. The subject application proposes the use of non-INTELSAT space segment facilities to provide international television and private line service not interconnected with the public switched network. The Satellite Act provides for U.S. participation and support of the INTELSAT global commercial satellite system. Although the United States is a Party to the INTELSAT Agreement and is committed to a strong, viable INTELSAT system, the Satellite Act clearly does not require or contemplate the sole use of INTELSAT to satisfy U.S. requirements for international satellite services. It specifically provides for the creation of additional satellite systems if ". . . required to meet the unique

[1] Armenia, Azerbiajan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan.

[2] Soviet domestic satellite system located at 11^0 W.L.L.

[3] Permissible Service of Separate Satellite Systems, FCC 92-95, (released April 13, 1992); Establishment of Satellite Systems Providing International Communications, 101 F.C.C. 2d 1046 (1985) ("*Separate Systems Order*"), *recon.*, 61 R.R. 2d 649 (1986), *further recon.*, 1 FCC Rcd 439 (1986).

governmental needs or if otherwise required in the national interest." 47 U.S.C. §701(d).[4] The Executive Branch determines whether the use of non-INTELSAT facilities is in the national interest.[5]

7. In previous applications involving use of the Intersputnik system, the State Department has provided the Commission with conditions upon which the Commission may authorize the use of the Intersputnik system for private line service consistent with U.S. foreign policy and the national interest.[6] The State Department supports authorizing private line service as proposed in the previous applications. However, because it is concerned that commercial satellite systems cannot effectively engage in price competition with non-commercial systems, the State Department requests that the authorizations be granted subject to review after six months by the Commission and the Executive Branch. The State Department believes that the six month review will enable a future examination of potential migration of traffic from commercial systems, as well as a review of any intervening market mechanisms which might obviate any existing concerns. Although the Statsionar 11 system is separate from the Intersputnik system, we believe those same conditions imposed on the Intersputnik system should be applicable here.

8. We determine here that the applicant has satisfied the public interest standard of the Communications Act of 1934, as amended, 47 U.S.C. §214 and 47 U.S.C. §301 *et seq.*, and we grant its application subject to *inter alia*, the conditions set forth by the Executive Branch. The applicant proposes to use the Statsionar 11 system for the provision of international television service and private line services not interconnected with the public switched network between the U.S. and the countries listed in Appendix A. Under similar circumstances, the Commission has previously authorized the use of the Intersputnik system to provide television news coverage and private line service between the U.S. and the former U.S.S.R. and Eastern European countries which are not members of INTELSAT.[7] Further, the State Department has informed the Commission that U.S. obligations under the INTELSAT Agreement have been met since INTELSAT has favorably consulted the provision of non-switched services via the Statsionar 11 system.[8] In light of these circumstances, we find that the limited use of Statsionar 11 system proposed herein, subject to the conditions provided by the State Department, will serve the public interest.

II. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that the application of IDB (File No. I-T-C-92-178) IS GRANTED, and the applicant is authorized to establish channels of communications, via the Statsionar 11 satellite system between the U.S. and the points listed in Appendix A, for the provision of international television service and private line service not interconnected with the public switched network.[9]

10. IT IS FURTHER ORDERED that the initial total number of circuits authorized herein is two (2) 36-MHz video channels, and six (6) T-1 (1.544 Mbps) private line circuits.

11. IT IS FURTHER ORDERED that the continued effectiveness of this authorization is conditioned on the outcome of the review after six months by the State Department and the Commission as specified in paragraph 11 of the Commission's Order DA 91-621 (*See* 6 FCC Rcd 2932 (1991)). If the Commission is notified by the State Department that the continued use of the Statsionar 11 is no longer in the national interest, then this authorization will be subject to cancellation.

12. IT IS FURTHER ORDERED that IDB is authorized to provide international television service and private line services authorized herein using existing earth stations in the U.S. authorized to communicate with the Statsionar 11 satellite system at 11^0 West Longitudinal or future earth stations which may be so authorized. Should the applicant wish to construct its own earth station facilities to provide these services, an appropriate application under Title III of the Communications Act will be required.

13. IT IS FURTHER ORDERED that any authorization of IDB to provide private lines is limited to the provision of such private lines only between the United States and the points listed in Appendix A -- that is, private lines which originate in the United States and terminate in the points listed in Appendix A or which originate in the points listed in Appendix A and terminate in the United States. In addition, IDB may not -- and IDB's tariff must state that IDB's customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international basic telecommunications services, including switched voice services, unless authorized to do so by the Commission upon a finding that the countries listed in Appendix A afford resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates*, Phase II, First Report and Order, 7 FCC Rcd 559 (1991), *petitions for reconsideration pending*.

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[4] Additionally, Congress has declared it to be U.S. policy ". . . to make available to consumers a variety of communications satellite services utilizing space segment facilities of INTELSAT and any additional such facilities which are found to be in the national interest . . ." and which are technically compatible with and avoid significant economic harm to the INTELSAT system. Pub. L. No. 99-93, 99 Stat. 425, §146, Aug. 16, 1985.

[5] Letter from George P. Schultz, Secretary of State, and Malcolm Baldridge, Secretary of Commerce, to Mark S. Fowler, Chairman, Federal Communications Commission (Nov. 28, 1984).

[6] Letter from Ambassador Bradley P. Holmes, Department of State to Chairman Alfred C. Sikes, Federal Communications Commission (Nov. 21, 1990).

[7] IDB Communications Group, Inc. *et al.*, 6 FCC Rcd 2932 (1991) and 7 FCC Rcd 1599 (1992); CICI, Inc., 6 FCC Rcd 4289 (1991).

[8] Letter from Steven W. Lett, Deputy Director for Satellite and Cable Policy, Bureau of International Communications and Information Policy, Department of State to George Li, Chief, International Facilities Division, Common Carrier Bureau, Federal Communications Commission (Mar. 16, 1992). *See also* BG-92-3 and BG-92-36.

[9] This authorization is not to be construed as permitting the provision of any service between earth stations located within the United States.

14. IT IS FURTHER ORDERED that neither the applicant nor any persons or companies controlling it or controlled by it shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which the applicant or any persons or companies controlling it or controlled by it are parties.

15. IT IS FURTHER ORDERED that the applicant shall submit monthly reports detailing the number and capacity of private line circuits in use over the Statsionar 11 system. The reports shall also set forth the number of private line circuits IDB has in use over each communications system for the countries served by the Statsionar 11 system. These reports shall be filed no later than the 20th day of each month and shall include the required information for the previous month.

16. IT IS FURTHER ORDERED that the applicants shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

17. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic, required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

18. IT IS FURTHER ORDERED that the applicant shall file a separate Section 214 application for the use of any additional circuits over separate satellite systems.

19. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between IDB and the foreign correspondents in the countries listed in Appendix A. A copy of each of the agreements shall be filed with the Commission within 30 days of its execution.

20. This order is issued pursuant to Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

APPENDIX A

Armenia
Azerbiajan
Belarus
Estonia
Georgia
Kazakhstan
Kyrgyzstan
Latvia
Lithuania
Moldova
Russia
Tajikistan
Turkmenistan
Ukraine
Uzbekistan

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COMCENTRAL, INC. File No. I-T-C-92-234

Application for authority to operate as an international resale carrier.

VISIONS LONG DISTANCE AMERICA INC. File No. I-T-C-92-262

Application for authority to operate as an international resale carrier.

VISIONS LONG DISTANCE NEW YORK INC. File No. I-T-C-92-263

Application for authority to operate as an international resale carrier.

NATIONAL TELEPHONE EXCHANGE, INC. File No. I-T-C-92-267

Application for authority to operate as an international resale carrier.

AMERICAN INTERNATIONAL NETWORK, INC. File No. I-T-C-92-268

Application for authority to operate as an international resale carrier.

CYBERNET INTERNATIONAL, INC. File No. I-T-C-93-002

Application for authority to operate as an international resale carrier.

COMMUNICATIONS SERVICES OF COLORADO File No. I-T-C-93-004

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: November 25, 1992; Released: December 10, 1992

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested applications, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice service to the general public on a resale basis by ComCentral, Inc., Visions Long Distance America Inc. (Visions America), Visions Long Distance New York Inc. (Visions New York), National Telephone Exchange, Inc. (NTE), American International Network, Inc. (AIN), Cybernet International, Inc. (CII), and Communications Services of Colorado (CSC).

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-92-234, I-T-C-92-2262, I-T-C-92-263, I-T-C-92-268, I-T-C-93-002 and I-T-C-93-004 ARE GRANTED; and

a. ComCentral and CSC are authorized to provide international switched voice service by the resale of the international switched voice services set forth in Advanced Telecommunications Corp.s' Tariff F.C.C. No. 2, AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1, US Sprint's Tariffs F.C.C. Nos. 1 and 2, C&W's Tariff F.C.C. No. 3, Litel's Tariff F.C.C. No. 1, Metromedia's Tariff F.C.C. No. 2 and Wiltel's Tariffs F.C.C. Nos. 1 and 2 between the U.S. and international points listed in those tariffs;

b. Visions America and Visions New York are authorized to provide international switched voice service by the resale of the international switched voice service set forth in MCI's Tariff F.C.C. No. 1 and RCI's Tariff F.C.C. No. 1 between the U.S. and international points listed in those tariffs;

c. NTE is authorized to provide international switched voice service by the resale of the international switched voice service set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, RCI's Tariff F.C.C. No. 1, US Sprint's Tariffs F.C.C. Nos. 1 and 2 and Metromedia's Tariff F.C.C. No. 2 between the U.S. and international points listed in those tariffs; and

d. AIN & CII are authorized to provide international switched voice service by the resale of the international switched voice service set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1, US Sprint's Tariffs F.C.C. Nos. 1 and 2, and C&W's Tariff F.C.C. No. 3 between the U.S. and international points listed in those tariffs.

3. IT IS FURTHER ORDERED that the applicants shall obtain any necessary operating agreements in each of the countries to which they will provide service and shall file them with the Commission within 30 days of their execution.

4. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

5. IT IS FURTHER ORDERED that the applicants shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. 43.61.

6. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicants seek authority to provide. The transmission of money is not considered to be a common

carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: December 1, 1992

ON DECEMBER 8, 1992 COMMON CARRIER BUREAU TO CONDUCT FORUM ON TRANSFER SERVICE PROVIDED BY OPERATOR SERVICE PROVIDERS

The Commission recently sought further comment in CC Docket No. 92-77, Phase 1, on possible methods for compensating operator service providers who receive 0+ dialed proprietary card calls on their presubscribed phone lines and who wish to transfer those calls to the proprietary card issuer for completion. Specifically, the Commission sought comment on the network interconnection arrangements needed to provide such transfer service, including arrangements between and among interexchange carriers and local exchange carriers.

To implement the Commission's Order, the Common Carrier Bureau will meet with interested parties to obtain information on 0+ call transfer service implementation and identify issues on which the industry can reach consensus.

Accordingly, on December 8, 1991, the Common Carrier Bureau will conduct an informal forum to discuss and gather information on possible mechanisms for compensating operator service providers for 0+ call transfer service, and related network interoperability and implementation issues. Interested parties are invited to attend.

The forum will be held in the Commission Meeting Room, 8th floor, 1919 M Street, N.W., Washington, D.C., on Tuesday, December 8, 1992, from 2 p.m. to 5 p.m.

For further information, contact Barbara Esbin or Jodie Donovan, Tariff Division, Common Carrier Bureau, at (202) 632-6917.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In re

Virginia RSA 6 Cellular Limited Partnership — File Nos. 10880-CL-P-686-B1-89; 163500-91-17-JFW

Notice of Apparent Liability for Forfeiture Penalty for Station KNKQ314 in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block B, in Market No. 686, Virginia 6 (Highland)

MEMORANDUM OPINION AND ORDER

Adopted: November 11, 1992; Released: December 10, 1992

By the Commission:

1. On January 8, 1991, the Commission issued a notice of apparent liability for forfeiture against Virginia RSA 6 Cellular Limited Partnership (Partnership) for unauthorized preconstruction in *Virginia RSA 6 Cellular Limited Partnership*, 6 FCC Rcd 405 (1991) (*Order*). Pursuant to Section 1.80(f)(3) of the Commission's rules, Partnership requested rescission or reduction of the forfeiture. For the reasons set forth below, we will grant Partnership's request to the extent indicated below and will reduce the forfeiture amount to $30,000.00.

I. BACKGROUND

2. In its *Order*, the Commission found that Partnership had engaged in unlawful preconstruction at three proposed cell sites in violation of Section 319(a) of the Communications Act of 1934, as amended, (the Act) and Section 22.43(a) of the rules. Also, the Commission found Partnership apparently liable for a forfeiture in the amount of $20,000.00 with respect to each of the sites and issued a notice of apparent liability for forfeiture against Partnership in the total amount of $60,000.00.

II. DISCUSSION

3. Partnership does not deny the facts underlying the *Order*. However, Partnership asserts that it "has no direct culpability for the violations" because "at no time did the Partnership intend to violate or knowingly violate any of the FCC's rules or policies" and "[a]t all times, the Partnership's conduct . . . was guided by the advice of its experienced prior communications counsel . . . ." *See* Partnership response at 6, 7 and Attachment A (Affidavit of James S. Quarforth at 3).

4. Section 503(b)(1) of the Act provides that the Commission is authorized to impose forfeiture penalties upon persons who "willfully or repeatedly" fail to comply with the Act or the rules. We previously have noted that "willful means that the licensee knew he was doing the act in question, regardless of whether there was an intent to violate the law." *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991) (quoting H.R. Rep. No. 765, 97th Cong., 2d Sess. 51 (1982)).[1] Further, a licensee is responsible for his own acts or omissions and for complying with the Act and the rules; therefore, a licensee's claim that it acted upon advice of counsel is grounds for neither rescission nor mitigation of a forfeiture penalty.[2] Accordingly, the facts that Partnership may not have intended specifically to violate the Act or the rules and may have relied upon incorrect legal advice does not excuse the willfullness of the repeated,[3] unauthorized preconstruction under Section 503(b). Therefore, because the violations were willful and repeated within the meaning of Section 503(b)(1), we reject Partnership's assertion.

5. Also, Partnership contends that the "violation . . . was quite modest . . . . [because it] involved only limited work on a very small portion of its cellular system" and "[t]he total cost and effort involved . . . was nominal. . . ." *See* Partnership response at 8 and 9. The Commission views unauthorized preconstruction as a serious offense. The unauthorized preconstruction here involved installing cellular antennas and transmission lines at two proposed cell sites, and installing cellular antennas and transmission lines and increasing the height of a tower at a third proposed cell site, which we believe is significant. Therefore, we reject Partnership's contention.

6. Next, Partnership contends that the forfeiture is excessive in view of its "financial position as a start-up venture consisting of small rural telephone companies" which lost over $850,000.00 in 1990. *See* Partnership response at 18. Partnership did not submit any financial data supporting its contention. Nor did it provide any evidence of its gross revenues which, in general, is the most significant factor utilized in evaluating ability to pay.[4] In the absence of such financial data or other evidence of inability to pay the forfeiture penalty, we are unpersuaded that rescission or mitigation is warranted.[5]

7. Further, Partnership asserts that the proposed forfeiture amount is unjustified under the Act and the rules and "unprecedented and unreasonable[.]" Partnership response at 14.[6] In 1989, Congress substantially increased the dollar amounts of the Commission's forfeiture authority.[7] Specifically, under Section 503(b)(2) of the Act, the Commission may assess forfeitures of up to $100,000.00 against common carriers for each violation or each day of a continuing violation. Forfeitures for continuing violations involving a single act, however, are limited to $1,000,000.00. *See* U.S.C. Section 503(b)(2). The instant forfeiture was the first imposed against an authorized carrier for unlawful premature construction of cellular facilities under the increased forfeiture authority. Therefore, the dollar amount of the instant forfeiture is necessarily unprecedented. Moreover, because the Commission is authorized under Section 503(b) to impose a $1,000,000.00 forfeiture for the continuing violations at each of the Massanutten Peak and Kiser Hill sites, and a $500,000.00 forfeiture at the College Park Hill site, the $60,000.00 total forfeiture for all three sites is neither unreasonable nor excessive.[8]

8. Finally, Partnership asserts that "CFW Telephone [Company (CFW Telephone)][9] . . . has never been found in violation of [the Commission's] . . . rules [and, m]oreover, . . . has satisfactorily complied with state regulatory rules and standards." *See* Partnership response at 10 (footnote added). CFW Telephone's prior record of compliance be-

fore the Virginia State Commission Corporation was a factor already considered by the Commission in setting the amount of the forfeiture and, therefore, provides nothing new toward mitigation in this case. *See Order* at 407. However, we accept Partnership's assertion that the forfeiture should be reduced in light of CFW Telephone's record before the Commission. We find nothing in the Commission's records contradicting Partnership's claim in this regard. Consequently, we reduce the forfeiture to $10,000.00 with respect to each of the three sites and, accordingly, find Partnership liable for a total forfeiture of $30,000.00.

III. ORDERING PARAGRAPHS

9. Accordingly, IT IS ORDERED that the request for rescission or reduction in the above-captioned proceeding, filed by Virginia RSA 6 Cellular Limited Partnership IS GRANTED TO THE EXTENT INDICATED ABOVE and IS DENIED in all other aspects.

10. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Act, 47 U.S.C. Section 503(b), and Section 1.80(f)(4) of the Commission's rules, 47 C.F.R. Section 1.80(f)(4), that Virginia RSA 6 Cellular Limited Partnership SHALL FORFEIT to the United States the sum of Thirty Thousand Dollars ($30,000.00) for violations of Section 319(a) of the Act, 47 U.S.C. Section 319(a), and Section 22.43(a) of the Commission's rules, 47 C.F.R. Section 22.43(a). Payment of the forfeiture may be made by mailing a check or similar instrument to the Commission payable to the order of the Federal Communications Commission within thirty (30) days from the date of this Order to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

11. IT IS FURTHER ORDERED that if said forfeiture is not paid within the period specified, the case will be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act, 47 U.S.C. Section 504(a).

12. IT IS FURTHER ORDERED that a copy of this Order BE SENT to Virginia RSA 6 Cellular Limited Partnership, certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] *See also* MCI Telecommunications Corporation, 3 FCC Rcd 509, 515, 516, n.22 (1988) (MCI's unauthorized preconstruction is "willful ([because] it took the action involved) and repeated ([because] the violations were repeated over more than one day)"), *as supplemented*, 4 FCC Rcd 7299 (1988), *appeal dismissed by judgment sub nom.* TeleSTAR, Inc. v. FCC, 901 F. 2d 1131 (D.C. Cir. 1990) (Table); *see also* Hale Broadcasting Corp., 79 FCC 2d 169, 171 (1980).

[2] *See* Salter B/casting Co., 35 FCC 2d 563 (1972) (licensees will not be excused for violations when the advice of its attorney proves to be incorrect); *see* Lorain Community Broadcasting, 18 FCC 2d 686, 688 (1969) (violation of the rules "can[not] be excused on the ground that communications counsel had" provided applicant with erroneous advice); *see* WGOK, Inc., 2 FCC 2d 245, 246 (1965) (in rejecting the licensee's request that the forfeiture amount be mitigated because it "acted upon advice of counsel[, the Commission stated that] . . . . responsibility for compliance with the . . . Act and our rules rests upon each licensee.").

[3] In relevant part, Partnership engaged in continuing unauthorized preconstruction at the three cell sites beginning on March 10, 1990, April 25, 1990 and May 16, 1990, respectively. The earliest date that Partnership lawfully could have preconstructed at the three cell sites was May 21, 1990, under Section 22.43 of the rules. *See* Order at 406.

[4] *See* PJB Communications of Virginia, Inc., 6 FCC Rcd 2088, 2089 (1992) (PJB).

[5] Moreover, "the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay a forfeiture." *See* PJB at 2089.

[6] Partnership's cited cases are not relevant because they either do not involve unlawful premature construction or the forfeitures imposed were not issued under the increased amounts of our forfeiture authority.

[7] *See* Pub. L. No. 100-239, 103 Stat. 213 (approved December 19, 1989).

[8] Further, the forfeiture amount imposed here is much less than under the Commission's subsequently adopted standards for assessing forfeitures of this type. *See* Policy Statement, Standards for Assessing Forfeitures, 6 FCC Rcd 4695 (1991), *recon. denied*, 7 FCC Rcd 5339 (1992), *pet. for review pending sub nom. USTA v. FCC*, No. 92-1321 (D.C. Cir. filed July 30, 1992).

[9] CFW Telephone is an affiliate of CFW Cellular, Inc., which is the sole general partner in Partnership.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-306

In re Applications of

HENRY R. MALLOY, JR. d/b/a REM MALLOY BROADCASTING	File No. BPH-860627MH
PEEBLES BROADCASTING COMPANY	File No. BPH-860603ME
JAMES S. LEE and DONALD L. BAKER d/b/a INTERACTIVE MEDIA	File No. BPH-860707MS
FREE AIR CORPORATION	File No. BPH-860707NH
BERNARD DAWSON	File No. BPH-860707NW
SPECIAL MARKETS MEDIA, INC.	File No. BPH-860703MH

For Construction Permit for a
New FM Station on Channel 275A
Raleigh, North Carolina

Appearances

Mark J. Prak and *Randall M. Roden*, on behalf of Henry R. Malloy, Jr., d/b/a Rem Malloy Broadcasting; *Gary S. Smithwick* and *Arthur V. Belendiuk*, on behalf of Peebles Broadcasting Company; *Michael J. Wilhelm*, on behalf of James S. Lee and Donald L. Baker d/b/a Interactive Media; *Stephen T. Yelverton*, on behalf of Free Air Corporation; *Lawrence J. Bernard, Jr.*, on behalf of Bernard Dawson; *Robert J. Buenzle* and *Henry E. Crawford*, on behalf of Special Markets Media, Inc.; and *Norman Goldstein*, on behalf of the Chief, Mass Media Bureau.

FURTHER SUPPLEMENTAL INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOSEPH CHACHKIN

Issued: December 2, 1992; Released: December 11, 1992

PRELIMINARY STATEMENT

1. All of the captioned application except Special Markets Media Inc. (Special Markets) were originally designated for hearing by *Hearing Designation Order*, DA 88-904, released July 19, 1988. After evidentiary hearings were held in January of 1989, an *Initial Decision (I.D.)*, 5 FCC Rcd 8423, was released on December 5, 1989 proposing a grant of the Peebles Broadcasting Company (PBC) application. Subsequently, a *Supplemental Hearing Designation Order*, DA 89-145, was released on December 27, 1989 designating the Special Markets' application for hearing with the others. Following additional hearings on Special Markets' application in the summer of 1990, a *Supplemental Initial Decision*, 6 FCC Rcd 2247, was released on April 24, 1991, concluding that Special Markets was not qualified to be a licensee and reinstating the grant of PBC's application.

2. In *Memorandum Opinion and Order*, FCC 91R-90, released October 17, 1991, the Review Board remanded the proceedings to the Presiding Judge for additional hearings and the preparation of a Further Supplemental Initial Decision on the following new issues against PBC and Interactive Media (Interactive).

(1) To determine whether Peebles Broadcasting Co. was financially qualified at the time it filed its application, and the effect thereof on its basic qualifications;

(2) To determine whether Peebles Broadcasting Co. misrepresented facts or lacked candor in certifying its financial qualifications at the time it filed its application, and the effect thereof on its basic qualifications;

(3) To determine whether Interactive Media was financially qualified at the time it filed its application, and the effect thereof on its basic qualifications;

(4) To determine whether Interactive Media misrepresented facts or lacked candor in certifying its financial qualifications at the time it filed its application, and the effect thereof on its basic qualifications.

(5) To determine whether Interactive Media possessed reasonable assurance of the availability of its initial transmitter site at the time it filed its application, and the effect thereof on its basic qualifications;

(6) To determine whether Interactive Media misrepresented facts or lacked candor in certifying the availability of its initial transmitter site at the time it filed its application, and the effect thereof on its basic qualifications;

Both the burden of proceeding and the burden of proof on the added issues were placed on PBC and Interactive. Tr. 1722.

3. The supplemental hearing was held in Washington, D.C. on January 7-9, 1992. The record was closed on January 9, 1992. *Order*, FCC 92M-51, released January 13, 1992. Supplemental findings of fact and conclusions of law were filed February 24, 1992. Replies were filed March 11, 1992.

Findings of Fact

Financial Qualifications of PBC

4. PBC is a corporation with two classes of stock. Millard R. Peebles Jr., (Peebles) holds all voting stock which represents 25% of the corporation's equity and Inez Peebles, his cousin, owns all of the non-voting stock which represents 75% of the equity. PBC Ex. 1. The PBC application executed by Mr. Peebles on July 2, 1986, contained a certification that the applicant was financially qualified to construct and operate its proposed station for three months without revenue. *Official Notice taken.* This certification was based on various estimates Peebles made of construction and operation costs, his assumption that he had rea-

sonable assurance that PBC could lease most of the station's equipment and that PBC could borrow $85,000 from the Mechanics and Farmers Bank (M&F) of Raleigh, North Carolina. PBC Ex. 33, pps. 1-3, 4 and 146. These aspects of PBC's showing are treated below:

PBC's Cost Estimate

5. On May 12, 1986, Millard Peebles completed a written budget of the projected costs of constructing and operating PBC's proposed station. Tr. 1814. Construction costs were estimated as follows (PBC Ex. 33, p. 36-37):

(a) Equipment	
Transmitter - 3.5 kw.	$27,950.00
Tower - 300 ft	25,000.00
Emergency Broadcast System	3,000.00
Spare tubes	935.00
Antenna	4,000.00
Modulation Meters	1,550.00
a Frequency Meters	4,000.00
Optimod 8100a	4,400.00
2 Turntables	1,200.00
4 Cart Machines	6,689.00
1 Reel to Reel Machine	2,000.00
2 Audio Boards	8,000.00
Satellite Equipment	7,000.00
Transmission Line	3,100.00
Cables, Miscellaneous	10,000.00
TOTAL EQUIPMENT	$108,824.00
(b) Other Construction Costs	
Construction	$30,000.00
Miscellaneous (office equipment, tapes, phone)	10,000.00
TOTAL OTHER COSTS	$40,000.00
TOTAL CONSTRUCTION COSTS	$148,824.00

6. Millard's May 12, 1986 budget included the following projections of monthly operation costs (PBC Ex. 33, p. 37):

Salaries	$9,165.00
Power and Light	3,000.00
Repairs and Maintenance	1,000.00
Program Supplies	500.00
News Service	785.00
Network Fee	1,200.00
Bank Note ($177,000 @ 14% @ 10 years);	1,382.00
TOTAL MONTHLY OPERATING COSTS	$17,032.00

7. Peebles' construction costs ($148,824.00) and 3 months operating expenses ($51,096) projected total costs of $199,920.00. Peebles assumed mistakenly, however, that the cost estimates totaled $176,318. Tr. 1817. Peebles reached this erroneous conclusion by only including salaries as an operating expense and failing to include the non-salary expenses detailed in his May 12 budget. See PBC Ex. 33, p. 37.

8. Peebles met with Stanley Green of the M&F Bank to discuss a loan in the amount of $177,000 to cover the assumed $176,318 estimated construction and first three months operating costs. Green told Peebles that PBC did not have sufficient collateral to support a loan of that size. Tr. 1821, 1867-1869,1900-1901.

9. Peebles then decided that PBC would lease rather than purchase broadcast equipment in order to lower the cost estimates. Tr. 1866-1868, 1900-1901. He contacted the Harris Corp. about leasing. It is a manufacturer of equipment and does not lease. Harris only refers customers to leasing companies. It did not refer Peebles to a leasing company, nor did it obtain any information about Peebles or PBC's creditworthiness. No determination was made as to how PBC would finance the equipment. Malloy Ex. 5, pp. 11, 13-15, 28; Tr. 1832, 1834, 1897-1988.

10. In late May or early June of 1986, Peebles had several telephone conversations with Scott A. Martin, the District Manager-Radio Sales for Harris Corporation whose offices were in Charlotte, North Carolina. PBC Ex. 33, p. 1; Malloy Ex. 5, p. 9. He asked Martin for a quote on a basic package of equipment for a Class A FM station and the cost of leasing that package. Tr. 1841. On June 8, 1986, Martin sent Peebles a letter and a 12 page list of equipment and prices for a typical Class A FM radio station. PBC Ex. 33, pps. 42-54; Malloy Ex. 5, pps. 7-8. In pertinent part, Martin's letter to Peebles reads as follows (PBC Ex. 33, p. 42):

> Enclosed please find the equipment proposal for a typical Class A FM radio station which you requested. I have also included brochures on the major pieces of equipment and general information regarding leasing.
>
> Please notice that the proposal does not include a quotation for the tower. Once your engineering data is firm, I will gladly provide a tower quotation based on that data.
>
> As we discussed on the telephone today, this equipment package (including the tower) can be leased for approximately $1,700 per month. This is an 84 month lease and requires first and last payments ($3,400) in advance. If you require additional leasing information, I will have someone from our home office give you a call.

11. The total cost of the equipment described in the list attached to the letter was $71,772.40. PBC Ex. 33, p. 53. The list did not inlcude equipment needed for a studio-transmitter link, for remote control of the transmitter, for operating an emergency broadcast system, for emergency power generators, or satellite receiving equipment. Tr. 1872-1874. PBC Ex. 33, pp. 51 and 54; Malloy Ex. 5, pp. 8, 9, 26-27.

12. The list included a description of a "typical" 300' guyed tower, but no price was listed. PBC Ex. 33, p. 47. Martin stated that when he projected the monthly equipment leasing costs of $1,700 quoted in his letter he included the cost for a "typical" tower used by Class A FM stations: i.e. a 300' guyed tower after obtaining a quote from a tower company. Malloy Ex. 5, p. 16, 18. He recalled that such towers typically cost between $30,000 and $40,000 in 1986. *Id.* p. 24. He then added the figure he obtained from the tower company to the $71,772.40 cost of other equipment described in the list and used the tower to compute the cost of leasing by referring to a rate sheet provided to Harris by an independent leasing company. *Id.* pp. 14-16. Martin was "quite confident" that he used the cost of a typical 300' guyed tower as a basis for computing the $1,700 monthly leasing costs described in his letter. *Id.* p. 16. He said all of the cost projections supplied to Peebles

were a starting point for discussions and were not intended to cover the final configuration of a specific broadcast station. *Id.* p. 25. He did not recall any conversation with Peebles in which he was informed that PBC proposed to erect anything other than a typical 300' guyed tower. *Id.* pp. 17, 24. While he was at Harris he provided equipment to a number of stations under leases, but could not recall any such transactions which involved a self-supporting tower. *Id.* pp. 18-19. The leasing companies he dealt with at Harris had guidelines requiring that the cost of a tower could not exceed a certain percentage of the total cost of the equipment and if a proposed tower exceeded that percentage, they would not agree to a lease. *Id.* p. 19.

13. Peebles originally projected a $25,000 cost for construction of a 300' guyed tower in his May 12 budget. PBC Ex. 33, p. 36; Tr. 1820. However, in late May or early June, he learned that a self-supporting tower would be required to use a small site he was then considering. Tr. 1860. He was aware that the cost of constructing such a tower would be greater than the $25,000 he had budgeted. Tr. 1861. Although PBC did not ultimately use the site he was considering in early June, Peebles claims that he knew the tower height which would be required at that site and related to Martin that height and the requirement for a self-supporting tower. Tr. 1850, 1890; PBC Ex. 33, pp. 1-2. At hearing, Peebles testified that he could not remember the height of the tower he described to Martin or whether its height was greater or less than the 373' foot tower ultimately proposed in PBC's application. Tr. 1830, 1825. Peebles also claimed at hearing that Martin told him in early June that he, Martin, had obtained a quote for the cost of a self-supporting tower from a tower company and had included that quote in the computation of the $1,700 per month leasing costs. Tr. 1850, 1896. However, Peebles could not recall whether Martin ever told him the amount of the quote and Peebles never saw any written documentation of the quote. Tr. 1828, 1850-1851. PBC offered no evidence as to the cost of a 373' self-supporting tower at the time of PBC's July 2, 1986 certification.[1]

14. After receiving the letter from Harris, Peebles prepared a revised, handwritten, budget based on leasing, rather than buying, the equipment for the station and gave this document to the accounting firm of Ernst & Whinney. PBC Ex. 33, p. 2; Tr. 1896, 1916. Peebles did not keep a copy of this handwritten document and the accounting firm apparently lost or destroyed the original. Tr. 1921, 1927-1928. However, based on the May 12, 1986, written estimates, if PBC leased broadcast equipment instead of purchasing it, the cost estimates for construction and the first three months of operation (assuming the use of a guyed tower) would be:

$40,000	construction (including transmitter building) and office equipment
$51,096	three months operating expenses, including $27,485 for salaries ($17,032 per month x 3)
$ 8,500	lease of equipment for 3 months, plus 2 months payment in advance
$ 7,000	satellite programming reception equipment
$106,596	total

(PBC Ex. 33, pp. 36-37; Tr. 1820, 1883, 1950-1951).

15. Peebles claims that the total amount of this budget was $85,000 and that it contained all of the necessary costs of construction and three months operations plus a cushion of $28,000 for unknown or unexpected expenses. PBC Ex. 33, p. 2; Tr. 1916. Asked to explain how he "redid" the May 1986 budget to reach an $85,000 total cost estimate, Peebles testified that he reduced Peebles' proposed sales force of three to one salaried employee. He did not specify the amount such a staff reduction saved or whether other staff changes were made. Rather, he simply asserted that total salaries for the first three months of operation were decreased to $5,033/month in the Ernst & Whinney projections.[2] He then added the power and light, repairs and maintenance, program supplies, news service, network fee and bank note payment figures from Peebles Ex. 33 and multiplied them by three. Finally, he added $8,500, sum of five monthly equipment lease payments of $1,700 each, $7,000 for the satellite programming costs, and an unspecified figure for installation costs. (Tr. 1917-1923).

16. Peebles stated that the Ernst & Whinney projections, purportedly derived from the missing second budget, constituted the "budget" he relied on in certifying PBCs' financial qualifications. Specifically, Peebles asserted that the four line items on page 82 of PBC Ex. 33 under the category "General and Admin. Expenses" (*i.e.*, salaries, rent, operating expenses and payroll taxes) for the first three months of operation encompassed PBCs' entire projected construction and operating costs. These figures total 25,231 x 3 or $75,693. The figure does not include the *additional* salary costs for "selling expenses" enumerated on page 81 of PBC Exhibit 33 amounting to $13,749. Based on the $29,814 ($25,231 + $4,583) net income deficit figure on page 82, it would appear that Ernst & Whinney projected $89,442 in total first three months' costs. The figure of $89,442 is clearly in line with Peebles' testimony that the Ernst & Whinney CPA had told him that the station would have to make sales of about $1,000 a day to cover opeating costs. Tr. 1930.

17. It is also clear that the Ernst & Whinney report relates solely to projected income and operating expenses. Tr. 1929. PBC Ex. 33, pps. 81-128. The only reference to construction costs which Peebles could point to in the report was a $1700 "rent" figure which, Peebles testified, referred to the monthly lease cost quoted in the Harris letter. Tr. 1920-1921.

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[1] Applicant Bernard Dawson obtained a price quote of $125,000 for a 375' self -supporting tower on December 7, 1988. Dawson Ex. 1, Att. C.

[2] Assuming proportional salaries for the sale staff projected in the May 1986 budget, the 2/3 decrease in staff would yield a savings of only $9,167 for three months ($13,750-$4,583). This falls well short of the $12,000 plus savings for salaries projected by Peebles.

18. Despite the fact that the Ernst & Whinney report contained no entries related to construction costs and the fact that Peebles could not provide any further breakdown to the items Ernst & Whinney had considered in preparing its report, Peebles insisted that all construction expenses were included in the figures projected in the report. Tr. 1922-1923, 1931, 1934. He pointed to a monthly line entry in the report for "Operating Exp." of $17,500[3] and claimed that one time construction cost items such as the first and last months equipment lease payments due Harris at the beginning of the lease and the costs of installing the equipment were included in this figure. Tr. 1922-1923; PBC Ex. 33, p. 42. The record simply does not support this claim. It is inconceivable that a national accounting firm would include one-time capital construction costs in an "operating" expense category and then repeat those costs through every month of a projected first year of operations.

19. Accordingly, the record requires a finding that in addition to those costs described in the Ernst & Whinney report, PBC would have construction costs for additional equipment not covered by the Harris lease for items such as remote control equipment, auxiliary power generators, (See PBC Ex. 3), an EBS receiver and satellite receiving equipment ($7,000), as well as the first and last months lease payments for the equipment ($3,400), the costs of installing the equipment, constructing a transmitter building, freight costs for shipping the equipment, office furniture and equipment and pre-operating expenses for rent, salaries, interest, etc. from the time the equipment was ordered until the station began operations. See, e.g. Tr. 1872-1874, 1906, 1922-1923, 1933-1934, 1951, and Dawson Ex. 2, pps. 2-4. In the absence of a detailed breakdown in the record of the costs of these items, it is reasonable to determine that these costs would equal or exceed the total of $40,000 Peebles budgeted for construction and miscellaneous costs in his May 12, 1986 budget. PBC Ex. 33, p. 37.

The 1986 M&F Letter

20. In its financial certification, PBC relied on a letter to Peebles from Stanley Green, Jr., Senior Vice President of Mechanics and Farmers Bank dated July 3, 1986. The letter reads, in pertinent part, as follows (PBC Ex. 33, p. 146):

> Thank you for contacting us to review your request for a $85,000 line of credit for the radio station you [are] trying to obtain.
>
> We would be happy to consider the request subject to the loan being secured by real estate that would have at least a 75% loan to appraised value of the property offered.

The issuance of the letter was the culmination of a number of meetings between Green and PBC's principals.

21. After preparing his May 12, 1986, budget, Pete Peebles and Inez Peebles spoke with Stanley Green, Senior Vice-President of M&F, regarding the possibility of the bank providing financing for construction and operation costs. Green was presented with the May 1986 budget and later the Ernest & Whinney projections. In addition, the bank had on file an installment loan application for $800 from Pete Peebles and a recent residential loan application for an unspecified amount from Inez Peebles. The latter included a 1984 income tax return and a listing of real estate in which Inez Peebles had an interest. Peebles Ex. 33 at 2, 132-144; Peebles Ex. 34; Peebles Ex. 35 at 18-19, 79-82; Tr. 1956-1957.

22. Peebles and Inez Peebles had accounts at the bank. The bank had financial information on both of them. The bank had given Inez Peebles a $13,000 car loan. Also, the bank granted Peebles' $800 loan application in early June of 1986 and various other personal loans since 1979. PBC Ex. 33 at 132-137; PBC Ex. 35 at 23-28. In addition, Green examined Peebles' credit report. PBC Ex. 35 at 24.

23. In June and July 1986, prior to its issuance of a bank loan letter, Peebles and Green discussed the amount to be borrowed and the terms of the proposed loan including the interest rate, repayment terms, security, and uses of proceeds. PBC Ex. 35 at 34-43; Tr. 1937. Green recalled that a line of credit was contemplated with only interest payments during the first year. Peebles Ex. 35 at 39.

24. With respect to collateral for the loan, Green testified that the bank was looking primarily to the real estate owned in whole or in part by Inez Peebles and the personal guarantees of PBC's principals. PBC Ex. 35 at 37-40. In this connection, Green stated that it was always his understanding that the loan would be made to Peebles and that Inez Peebles would provide the security for the loan. PBC Ex. 35, p. 46. Green's testimony is consistent with Inez Peebles' testimony that she had verbally committed to pledge enough collateral in the form of real estate to cover a loan for the construction and three months operation of the station. Tr. 2001-2002; PBC Ex. 34. See also PBC Ex. 33, Att. G.[4]

25. Green testified that in 1986, no final judgment had been made as to which specific parcels would be required as security. PBC Ex. 35 at 41. Also, the bank did not conduct appraisals on the properties prior to issuing the bank letter. However, based on his review of the property and having experience and knowledge of property values in Raleigh, Green was satisfied that the real estate holdings met the bank's collateral requirements. PBC Ex. 35 at 84-85. In this connection, before issuing the letter Green sought and received approval of Albernard Bass, the bank's loan administrator. Bass' approval was required in order to provide the loan. There was no need to have the approval of a loan committee. PBC Ex. 35 at 45.

26. The list submitted to M&F in 1986, shows Inez Peebles' real estate consisted of the following:

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[3] The $17,500 figure approximates the $17,032 for operating costs contained in Peebles' May 12, 1986 budget.

[4] On May 12, 1986, pursuant to Peebles' request, Inez Peebles certified her willingness to provide enough real estate to provide security for a $62,500 loan. PBC Ex. 33, Att. C; Tr. 2006-2035. It appears that at that time Peebles intended to pledge real estate consisting of equity in a house owned by his mother to provide security for the remaining $23,000 of the proposed loan. See Tr. 218, 225-226, 238, 261-262, 306, 328. However, as Green's testimony makes clear, at the time the bank issued the July 3, 1986 letter, the bank was only relying on real estate owned by Inez Peebles and her co-owners.

	Value	Encum-brances	Rentals	Ownership
Lincoln Court (home)	$60,000	$ 1,200	$ --	100%
Swain Street	40,000	6,000	350	50%
Gatlin Street	42,000	23,000	315	100%
Friar Tuck	68,000	43,000	700	50%
Coleman Street	50,000	26,700	375	100%
Lake Royal	6,000	--	--	100%
Durham Co	10,000	--	--	100%
Sanderford Road	180,000	--	--	50%
Mark Street	75,000	45,000	700	100%

[PBC Ex. 33 at 144.]

27. As indicated, Inez Peebles owned three of the properties with either her brother or daughter. Tr. 2011-2012. Neither relative has signed a document authorizing Inez Peebles in writing to use the properties as collateral for a loan. Inez Peebles has not spoken to her brother about the matter. Tr. 2016, 2041, 2054.

28. The estimated values of the properties are not based on property appraisals. With the exception of the Sanderford Road and Mark Street properties, the estimate was based on her study of comparable parcels. Tr. 2042-2043. Ms. Peebles is a licensed real estate broker. Tr. 2029-2030. Inez Peebles based her pre-certification evaluation of the Sanderford Road property on an option to purchase the property which she and her daughter had granted in mid-1985, with a six-month renewal provision at the option of the buyer. The option price was $189,835 ($26,087/acre for 7.277 acres). Tr. 2032-2033; Malloy Ex. 7. In November 1986, Inez Peebles commissioned an appraisal of the Sanderford Road property to determine the true value of the property. The appraiser concluded that the property was worth $733,000. Tr. 2033, 2053; PBC Ex. 36.

IA's Site Availability

29. James Lee and Donald Baker first became interested in the Raleigh channel in 1983. IA Remand Ex. 2 at 1; Tr. 2149. Lee was the IA partner responsible for the technical portion of its application. He and his partner, Baker, shared responsibility for identification and acquisition of a station site. (*Id.*)

30. "Well before the application was filed," perhaps as early as 1983, Lee ordered a frequency search from a Washington computer service bureau. Based on the frequency search, he sketched on a map a small trapezoidal area in which IA's site could be located. Due to severe spacing restrictions, the usable area was quite limited. IA Remand Ex. 2 at 1; Tr. 2244.

31. The partners visited the area and drove around it looking for ideal sites on high ground. Several months before July 1986, they located Capital Towers, an apartment building with an existing rooftop tower utilized by Station WCPE in Raleigh. Baker contacted the manager of the building, June Womack. Lee inspected the building and conferred with WCPE's Director of Engineering, whose approval would also have been required for IA use. They discussed extending the existing tower by approximately 25 feet. They also discussed possible lease terms and the future possibility of IA replacing WCPE as the exclusive user of the site. IA Remand Ex. 2 at 1-2; Tr. 2245-2264.

32. On June 24, 2986, Lee wrote a letter to Womack requesting permission to use the Capital Towers site. Lee did not retain a copy of the letter and did not recall its contents. Tr. 2247-2253. On July 1, 1986, Womack responded with a letter to Lee stating:

> We will be pleased to enter into negotiations for a lease agreement to use space atop our building at 4812 Six Forks Road, Raleigh, N.C., for an antenna in the event that you are awarded permission from the FCC to construction a new FM radio station.
>
> As you are aware, there are many details to be agreed upon before final approval can be received from our Board of Directors and HUD.

[Malloy Ex. 8][5]

33. Lee understood that the foregoing gave IA "reasonable assurance" of the Capital Towers site. In other words, he believed "that in the event a license was awarded to IA, I would be able to, all things being equal, go to that site and expect to be able to build or install a tower." IA Remand Ex. 2 at 1-2; Tr. 2267. But he conceded that Womack's letter "represents her attempt to protect herself from making a solidly binding agreement from which she couldn't extract herself." Tr. 2258. After receiving the letter, Lee did not communicate with Womack again until 1989 after he concluded that IA had no reasonable assurance of the Austin/Quail Corners site. Tr. 2256.

34. Subsequent to receipt of the Womack letter, Lee prepared a draft copy of IA's engineering section based on installation at Capital Towers. Toward the end of the week of June 30, 1986 (one week before the application was due), he either sent a copy to IA's counsel or gave him the coordinates of the proposed site. Counsel suggested that Lee verify the coordinates against a computer database to ensure that the site conformed with FCC spacing rules. Counsel did so and informed Lee on July 3 that the site was short-spaced due to the Commission's buffer zone restrictions. These had not previously been factored in by Lee. A new site had to be found immediately because of the upcoming July 4 holiday weekend and July 7 filing deadline. Lee and Baker understood that this was "absolutely important," since failure to obtain the site could result in dismissal of their application. IA Remand Ex. 2 at 2; Tr. 2147-2148, 2267-2269, 2316, 2403.

35. Lee obtained a revised site area map from counsel and contacted an acquaintance who was familiar with local buildings and land owners. Lee asked that the acquaintance put him in touch with owners of property that were suitable for the station. The acquaintance referred Lee to, among others, Dan Austin, owner of Quail Corners Shopping Center -- a location within the available site area. IA Remand Ex. 2 at 2; Tr. 2270-2271.

[5] IA received no written assurance of WCPE's willingness to permit IA to co-locate at Capital Towers. Tr. 2267.

36. Lee met once with Austin at the shopping center in July 1986. He did not recall whether it was Friday July 4 or Saturday July 5. The meeting lasted only thirty minutes because "Austin was busy and had little time for our discussion." IA Remand Ex. 2 at 2-3; Tr. 2270-2272.

37. Lee cannot recall exactly how he described the proposed tower to Austin. He let him know that a guyed tower was proposed and gave "some indication of the scale of the tower." Lee could not be specific on the latter point because at the time he met with Austin he did not yet know the height of the tower IA would propose. He had not yet calculated the average terrain figures for the site and could not calculate its exact height. Instead, Lee testified at the hearing, he "probably said something like a '250 to 300 foot tower,' or 'something over 200 feet.'" In a February 1989 declaration, Lee recalled differently. Therein, he stated that he probably referred exclusively to a "250-to-300-foot tower." And at a December 1991 deposition, Lee first stated that he gave Austin a "ballpark figure" "something over 200 feet." Lee then revised that testimony, noting that he specifically recalled Austin asking if Lee was talking about "something 150 to 200 feet," and Lee responding "at least that." IA Remand Ex. 2 at 3; Tr. 2274-2281.[6] [7]

38. Lee felt that Austin "demonstrated some sophistication in understanding our transmitter site needs." Austin "mentioned . . . that he had interests in other properties in the area which might even be more suitable." IA Remand Ex. 2 at 3. This recollection was not referenced in Lee's February 1989 declaration. Moreover, it was not based on any prior experience -- Lee had never met Austin before. In fact, Austin did not and does not have any experience in the construction of broadcast towers. And Austin told Lee that he had never before offered roof space for installation of a tower. Tr. 2281-2283, 2298; IA Remand Ex. 2 at 4.

39. According to Lee, he and Austin talked about the suitability of the building for installation of IA's tower. Austin told Lee that he did not believe that "a tower of that size, mounted on the roof, would be a problem structurally because the shopping center was 'overbuilt' -- it was designed to accommodate an additional two stories, which never had been constructed." IA Remand Ex. 2 at 3. But Austin never told Lee that the building had been designed to allow erection of a guyed tower or a 258-foot tower. Lee did not show Austin any documents (*e.g.*, a tower sketch), photographs or other materials to describe the proposed facility. Lee never described to Austin what the tower would look like from the roads running by the shopping center. Tr. 2283-2286, 2318.

40. Lee told Austin, and believed that he fully understood, that nothing they talked about in their July 1986 meeting was binding. IA Remand Ex. 2 at 4. Austin was in the business of "leasing space and he certainly was not prepared to tie any part of his space down without some binding obligation from me." Tr. 2290. If conditions changed prior to grant of a license to IA, the applicant would not "walk in there two years later and demand that in spite of what his condition is at that time that we be allowed to put that tower up." Tr. 2318-2319. Lee made no request for an option or agreement of any kind. He paid no money to Austin and did not intend to pay any money until IA got a grant. For his part, Austin made "no specific promise of indefiniteness" and Lee conceded that he was dependent solely on "Mr. Austin's word and his expression of interest in working with me." Tr. 2318-2321. Lee never asked Austin to advise IA if he changed his mind about use of his site and Lee never spoke to Austin again after July 1986 until the motion to enlarge was filed in 1989. Tr. 2305, 2315.

41. Lee and Austin reached no agreement on the length of the lease IA would assume. Tr. 2300. While Austin was comfortable discussing the cost of renting *studio* space, he had no idea what an appropriate lease payment for a rooftop tower would be. Lee informed Austin what it would have cost IA to locate at the Capital Towers site. He presented this figure as a "typical" roof lease rate to Austin, but noted in his testimony that that was not the price for extending WCPE's tower 25 feet (IA's proposal prior to July 3, 1986), but rather the cost of eventually supplanting WCPE as tenant. Lee conceded that the WCPE tower was only 50 to 75 feet while IA's proposed tower was 258 feet. Also, the Capital Towers building is 150 feet high while the shopping center stands about 20 feet fall. Nevertheless, according to Lee, the Capital Towers price was agreeable to Austin without further discussion or documentation. Lee cannot recall the exact price. IA Remand Ex. 2 at 4; Tr. 2259-2260, 2290-2298, 2307. But *cf.* Tr. 2297 where Lee conceded that he would have to pay Austin more than WCPE pays Capital Towers.

42. Asked what Austin said to him that he understood to constitute reasonable assurance of the availability of the Quail Corners site, Lee cited Austin's statements regarding the acceptability of the cost for the Capital Towers site, the suitability of the building, and the availability of studio space which would permit cost savings through co-location of facilities. Austin said he was willing to renovate such studio space. Combined with Austin's offer to make available his son to escort Lee on a tour of the roof and suitable studio space, Lee "felt a climate of support here." Tr. 2305-2306; IA Remand Ex. 2 at 4.

43. However, Lee acknowledged that Austin never made a "declarative statement" to the effect that IA could construct on his shopping center or specify the site in its application or that IA had reasonable assurance of consent to use the site. While Austin wished IA good luck, he never said in so many words that IA had permission to make a proposal involving his property. Tr. 2306-2311.

44. Lee further asserted that he told Austin that IA needed to submit an application to the Commission by a particular deadline using Austin's site rather than the site previously contemplated by the applicant. Tr. 2311. However, Lee did not refer to this discussion in his written testimony or his 1989 declaration. Tr. 2311-2314. Lee did not have a copy of IA's application when he met with Austin in July 1986 and never showed such a copy to him, either at their meeting or later. Tr. 2314.

45. After meeting with Austin, Lee joined Austin's son on the roof of the shopping center, where he examined the characteristics of the structure including the composition of the roof and the space available for the tower's guy

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[6] Lee acknowledged that he didn't "have specific recollection of exact words in any of that conversation or very many exact words in any of that conversation." Tr. 2275.

[7] When Lee visited Austin, he may have observed "some small receiving antennae, maybe CB or something like that" on the shopping center roof. They did not discuss these antennae. Tr. 2290-2291.

cables. IA Remand Ex. 2 at 4. Lee was on the roof for "maybe 15 minutes." Tr. 2302. See also Tr. 2272. He thinks he then met with the senior Austin again but was not clear on that point. Therefore, Lee did not include it in his written testimony. Tr. 2304, 2322.

46. Based on his "general overview" of the space, aimed at examining whether there was a suitable place for IA's transmitter shack and whether the vertical members in the building were properly located to center the tower and accommodate a guyed pattern, Lee concluded that the shopping center could be made suitable for IA's tower. He saw no "major problems" in modifying the building to accommodate the tower. Although Lee did not know even how much the tower would weigh, his own feeling was that "technically almost anything is possible." He apparently did not discuss this conclusion with Austin or the need to conduct the further comprehensive structural analysis Lee conceded would be necessary before actual construction. Nor did Lee discuss with Austin in any detail the structural modifications necessary or the potential cost of constructing IA's tower on the shopping center building, as opposed to the cost of renovating studio space. Tr. 2300-2302, 2321-2326.[8]

47. Lee did not discuss "any future steps" with Austin, such as having an engineer get in touch with the shopping center owner or obtaining some written confirmation of their discussions. Tr. 2308-2309. Lee never sent Austin a copy of the engineering for the proposed tower after it was prepared and filed, nor any FAA clearance request thereon. Tr. 2316-2317.

48. While Lee denied ever having suggested to Austin that IA proposed a ten to twelve foot antenna mast at Quail Corners (Tr. 2296-2297), Austin's recollection is diametrically contrary. Austin, who owns a neighborhood shopping center at Quail Corners of about eighty to ninety thousand square feet adjacent to a residential community[9] in Raleigh, testified as follows:

> "To the best of my recollection, all we talked about was an antenna, which I understood would be eight to ten to twelve feet high, and be hidden by a plywood soffit we have around the top of the shopping center." *Id.* at 6.

49. Asked if Lee and he discussed a 258-foot guyed tower, Austin denied it. He opined that "it would be physically impossible to get one up there, I think, anyway." According to Austin the men did discuss putting IA's studio at Quail Corners and Austin told Lee that the shopping center would be available for such a use. However, they could not have discussed, and Austin would not have authorized, any antenna or tower that could be seen from the road or the center's parking lot. Smaller non-obtrusive antennae were already on top of the shopping center, but Austin would not permit higher antennae "for appearance" and because he is "not sure that it would be possible to guy there. It may be physically impossible to put one up there. I have no idea about that."[10] *Id.* at 6-8.

50. Austin denied ever having authorized IA to construct a 258-foot tower at Quail Corners. Anyone seeking such authorization would have had to talk to Austin about it, and he has no understanding that, as a result of his conversation with Lee, he assured Lee of the availability of the shopping center for such a tower. *Id.* at 19.

IA's Financial Certification

IA's Cost Estimates

51. Sometime in late 1985 or early 1986, Baker and Lee determined that they would develop a comprehensive five-year business plan for their proposed station. The plan would be the basis for discussions with potential financiers and equipment vendors. It would also be their major planning document. Baker assumed the major role in preparing the plan,[11] but a consultant was hired to help with computerized projections.[12] Lee assisted with the "Facilities List and Cost" portion of the Five-Year Plan. IA Remand Ex. 1 at 1; IA Remand Ex. 3 at 1.

52. IA's Five-Year Plan contains only limited references to the applicant's proposed cost estimates for construction and first quarter operating costs. The section entitled "Financial Structure" (IA Remand Ex. 4 at 72) identifies total capitalization/start-up costs of $320,000, composed of $45,000 for legal fees and application costs, $125,000 to lease broadcast equipment and $150,000 for operating costs. In the "Management and Development" Section of the plan, a brief staffing budget amounting to $125,200 in annual salaries is outlined. *Id.* at 73. A "Pro forma Income Statement" (*id.* at 78) lists various first quarter expenses including salaries amounting to $54,850 and interest expense of $12,125. Finally, Appendix D entitled "Facilities List and Cost Estimates To Construct A Class A FM Station" (*id.* at 88-89) reads as follows:

APPENDIX D

FACILITIES LIST AND COST

ESTIMATES TO CONSTRUCT A CLASS A FM STATION

TRANSMITTER PLANT

Quantity	Item	Costs
1	5 KW FM transmitter with stereo generator	$30,000
1	Tower with lighting	10,000

[8] Lee thought there might have been discussion with Austin regarding zoning for a tower of the height IA proposed but "I just don't remember." Tr. 2328.

[9] The shopping center's rear parking lot abuts personal residences. IA Remand Ex. 5 at 5.

[10] When Austin "think[s] of a transmitter site, I would think of a big open field, and that you've got guy wires for acres around." *Id.* at 13.

[11] However, Baker did not deal with Albernard Bass, IA's banker, Austin and Steve Cauthen, the man who executed IA's lease letter. IA Remand Ex. 3.

[12] The consultant was a financial and business expert. He had no background in the broadcast business. Tr. 2401.

1	Double Bay Circularly polarized transmitting antenna	4,700
1	Frequency and modulation monitor and accessories	2,000
1	Remote control system	6,200
1	Dummy load and wattmeter	1,900
1	Stereo studio-to-transmitter link	7,500
1	Audio limiter/compression amplifier	3,800
1	Eight channel stereo main console with:	
2	Turntables, preamplifiers, arms and cartridges;	
2	Monitor speakers;	
2	Microphones	
2	Cartridge tape machines;	
1	Headset;	
1	On-Air light;	
1	Clock;	
1	Patch panel;	

* Certain equipment cost estimates were provided courtesy of Harris Corporation, Broadcast Products Division, Quincy, Illinois

Quantity	Item	Costs
1	Reel-to-reel tape recorder; and	
1	Equipment desk and rack.	
	SUBTOTAL	$16,000
1	Five channel stereo news production console with:	
2	Turntables, preamplifiers, arms and cartridges;	
1	Set technical test equipment	3,500
1	Remote pickup system with mixer	
	Electrical service, transmitter and studio	5,000
	Modifications to lease studio building	21,000
	Equipment installation and proof of performance	14,000
	Office equipment	11,000
	Miscellaneous, spares and contingency	29,000
	SUBTOTALS	
	GRAND TOTAL	

[IA Remand Ex. 4 at 88-89; IA Remand Ex. 2 at 4.]

53. Lee did not know whether the only "budget" prepared for IA was the Five-Year Plan and could not recall the total costs projected by IA. Tr. 2211. Baker, who had primary responsibility for the Plan, believed that the applicant's construction and first quarter operating cost budget was reduced to writing in the Plan and nowhere else. However, at his deposition, Baker denied that the Plan reduced to writing budget projections. He believed that the budget was reduced to writing in notes he prepared, but believed that they no longer existed. Tr. 2374-2377.

54. The tower cost of $10,000 estimated in the Five-Year Plan did not reflect costs associated with tower construction and installation at the Quail Corners site specified in IA's application. Rather, it reflected the cost of modifications to the existing Capital Towers facility, including an additional attachment for IA's antenna, mounting the antenna and providing lighting beams. Tr. 2192-2193; IA Remand Ex. 4 at 88.

55. As noted above, Lee did not discuss with Austin (much less agree upon) the costs associated with construction at the Quail Corners site. Nor did Lee provide to Baker any such figures. Indeed, Lee was not even certain whether IA would have leased or bought the tower and antenna necessary for that site outright. Lee thought that purchase of the tower would have cost about $30,000 but conceded that no estimate was obtained from any third party prior to certification. Lee had no explanation for the basis of the $3,000 "antenna space rental" estimate or the $1,500 "facility rental" in the Five-Year Plan. Baker assumed that those estimates were based on the Capital Towers site and typical Raleigh office rental costs, but could not recall any specific or written bases for the estimates. Tr. 2183, 2191-2194, 2219-2223, 2228-2229, 2233-2234, 2242, 2401-2403.

56. Lee also conceded that he made no determination in 1986 whether IA's tower could be mounted on an existing column or pillar in the Quail Corners shopping center building or whether instead a modification to the building to permit the tower to run through the building to the ground would be required. Nor did he reach a final conclusion as to how many or how long the tower guys would have to be, how much land they would require, or what modifications would have to be made in the roof of the structure, if any. Lee admitted that the resolution of such issues would directly affect the cost of the proposal. He also conceded that he did not discuss with Austin how much the latter would charge to permit his parking lot or land to be used for guys, if that option were chosen. On each of these points, Lee made no firm decision in 1986, believing that there were "several possibilities, all of which I deemed feasible." Tr. 2341-2352.

57. In spite of this uncertainty, Lee and Baker claimed that they did recalculate IA's costs in light of the intent to specify the Quail Corners site and concluded that they would meet these costs within the Five-Year Plan budget. The revised calcuations were reduced to writing, but the writing was not retained in any formal or separate form. Tr. 2213-2218, 2337-2341, 2392-2393. Essentially, Lee and Baker believed that the "cushion" in their budget made up of a "miscellaneous spares and contingency" fund of $29,000, a portion of the installation costs of $14,000 (premise on Lee's installation of equipment), and savings derived from co-location of IA's tower and studios (up to $13,700) would cover the admittedly larger (but unquantified) costs of locating at Quail Corners. IA Remand Ex. 2 at 4-6. Thus, Lee and Baker allegedly did not believe they had to amend or modify their "already-prepared certification of IA's financial qualifications." This process was concededly not "mathematically exact." *Id.* at 6. See also Tr. 2394-2395.

58. Baker also believed that, to the extent IA had underestimated its costs, they could borrow additional funds by "leveraging their construction permit." Baker understood that the FCC had changed its policy to permit the use of IA's construction permit as collateral for a loan in excess of the projected $150,000. Tr. 2392-2394. See also Tr. 2162.

2168-2169 and IA Remand Ex. 4 at 15, where Lee and IA's banker identified as an element of collateral "basically the license itself."[13]

59. Lee was confused about the "interest expense" line item in the operating expenses listing in the Five-Year Plan. He understood it to include "general debt service," but could not break it down between IA's bank loan and equipment lease. Tr. 2219, 2232. Baker at first could not recall what the item constituted either. Tr. 2400. On further prompting, however, he stated that this $12,125 figure included bank loan and lease payments. Tr. 2404. Baker acknowledged that in 1986, IA's understanding with the bank likely did not require interest payments during the first quarter. Tr. 2411-2416. Nor could Baker explain why IA's equipment lease letter specified monthly payments of $3,240 but its Five-Year Plan referred to an "equipment loan" cost of $3,308. Tr. 2410-2411; IA Remand Ex. 4 at 77-78.

IA's Sources of Funds

60. According to Lee, IA planned to lease equipment rather than buy it "to minimize the amount of up-front-cash" that would be needed. Tr. 2176. In June 1986, Lee contacted Bob Cauthen. Lee had dealt with him before in a connection which he could not recall. Lee was not sure whether Cauthen owned a company which could make equipment available. He did not know whether the company with which Cauthen was affiliated leased equipment at all or instead brokered such leases for equipment manufacturers. Lee knew that Cauthen's company was not an equipment manufacturer like Harris, but knew little else about them. Lee has never visited the offices of Cauthen's company and had no idea what equipment, if any, was in stock or what, if any, arrangement they had with equipment suppliers to obtain it. Lee had no knowledge of anyone who had ever leased equipment from Cauthen. Tr. 2180-2181, 2187, 2196, 2360-2362. But *cf.* IA Remand Ex. 1 at 3, where Lee described Cauthen's company as "a broadcast equipment supplier."

61. Lee did not discuss any of these issues with Cauthen during their single telephone conversation regarding IA. Nor did Lee provide Cauthen any information regarding Lee's or Baker's or IA's financial condition. (For example, Lee never gave Cauthen a copy of IA's Five-Year Plan.) Lee merely described the application process and the project and told Cauthen what kind of equipment package IA wanted to prepare. Lee told Cauthen that IA was interested in building a full-service broadcast facility with separate studio and transmitter facilities. Lee described the studio set-up and equipment contemplated. Then Lee requested "a letter of commitment for a lease, a lease arrangement." Tr. 2187-2188. Cauthen agreed to send Lee a letter indicating his willingness to lease broadcast equipment to IA conditioned upon award of the license and credit approval at the time of the lease. IA Remand Ex. 1 at 3-4.

62. On June 27, 1986, Cauthen wrote Lee a letter on the letterhead of S.C.M.S., Inc.[14] The letter thanked Lee for his call "this week and for the opportunity to discuss your future equipment needs for your radio station." Cauthen went on:

> If you have any questions, please do not hesitate to give me a call.
>
> As I mentioned to you, we can provide you a lease on the equipment package with credit approval at the time of purchase. There are various lease terms/rates available, but we have found the most popular seems to be a five year lease. At current rates, a $120,000 package would be $3240 per month for five years with the first and last payment down and a 10% buyout at the end of the lease period.
>
> Please call me if you need additional service or our help. Thank you.

[IA Remand Ex. 6]

63. No equipment list was attached to Cauthen's June 1986 letter. Lee assumed that the equipment package to be leased by or through Cauthen was the equipment identified in the Five-Year Plan, since that is the list Lee utilized during his telephone conversation with Cauthen. However, Lee admitted that there is no way to tell with any certainty which equipment the Cauthen letter included within its $120,000 package, and which equipment IA intended to buy rather than lease. This is particularly true in light of the numerous blanks or gaps in dollar figures in the equipment listing in the Five Year Plan which Lee could not explain. Tr. 2181-2183, 2189-2192, 2358-2360.[15]

64. Lee and Baker agreed that Cauthen was never advised of IA's proposal to construct at the Quail Corners shopping center. Indeed, Lee was not sure whether Cauthen was ever made aware of the Capital Towers proposal. Tr. 2180-2182, 2191-2194, 2334. Lee and Baker were not certain even at hearing whether their tower would be leased or purchased. *Id.* and Tr. 2405-2408. They likewise differed on whether all of their equipment would be leased or just most of it. Compare Tr. 2405 and tr. 2190.

65. Neither Lee nor Baker nor IA had the financial resources to meet the Commission's financial requirements. Accordingly, in early June 1986, Lee met with Albernard Bass, a loan officer at Mechanics and Farmers Bank in Durham, North Carolina. Bass believed that he may have been introduced to Lee once before when Lee was employed by the African News Service, a bank customer. Moreover, Bass had heard of Lee "in various business circles." Bass could not recall whether Lee was a bank customer in June 1986. Bass has never met Baker although he knew of him because Baker's wife was a customer in 1986. IA Remand Ex. 1 at 1-2; IA Remand Ex. 4 at 5-8; Tr. 2151-2152.

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[13] But *cf.* Tr. 2395 where Baker testified that only real estate was offered as collateral to M&F in July 1986.

[14] The Five-Year Plan referred to a lease agreement with "Southern Coastal Equipment Company." IA Remand Ex. 4 at 72. Lee offered no explanation for the discrepancy. Tr. 2179. Lee's written testimony referred to "Southern Coastal Marketing." IA Remand Ex. 1 at 3.

[15] Baker contended that IA's equipment needs amounted to only approximately $85,000, substantially less than Cauthen's quoted price of $120,000. Tr. 2405-2407.

66. Lee believed that he had IA's Five-Year Plan with him when he first met Bass, but was not certain. He told Bass of IA's plan to apply to the FCC for a license to operate an FM station in Raleigh and the need to secure reasonable assurances of funding for the project should a license be awarded. Lee gave Bass background information about Docket 80-90, the opportunity that it presented, and the Raleigh market. Lee then recalled that "Bass expressed strong interest in the project but said he would need more information." Asked to define the basis for this testimony, Lee could only recall that Bass said "something like, this sounds like a good opportunity, this sounds like an excellent opportunity." Tr. 2153-2156; IA Remand Ex. 1 at 2.

67. Bass requested financial projections and financial statements from Lee and Baker. He outlined for Lee the general guidelines for loans, including interest rates and types of collateral needed to secure such loans. Bass provided to Lee blank copies of personal financial statements to be completed by Lee and Baker. Lee told Bass that IA would soon be filing their application with the Commission (by July 7) and "that it would be necessary for us to reach an agreement with him before the deadline." They agreed to meet again when Lee had compiled all of the additional information Bass needed. IA Remand Ex. 1 at 2; Tr. 2204.

68. On July 2, 1986, Lee and Bass met again. Lee presented to Bass a letter transmitting the Five-Year Plan. The letter read as follows:

130 Nelson Street
Durham, NC 27707
July 2, 1986

Mr. Al Bass
Vice President: Loan Officer
Mechanics and Farmers Bank
P.O. Box 1932
Durham, NC 27702

Dear Al:

Enclosed is the business plan for the radio station. It presents our best conservative estimates of the course of financial events for the first five years of operation. This is a first projection and does not reflect either worst case or best case analysis. If anything, however, the figures presented here are skewed toward the former. In the coming months it is our intention to refine these projections to reflect a broader range of possible outcomes.

We are submitting an application to the FCC for permission to construct the station. Unfortunately we are not the only applicants and competition is expected to be keen. There will be a series of comparative hearings which may be drawn out over many months. One of the requirements of the application is that we have "reasonable assurances" that loans and/or investments are available to us if the license is awarded. It is this reasonable assurance that we are seeking from the Mechanics Bank.

For our purposes, a letter from the bank, expressing an interest in the project and outlining the conditions under which a loan would be considered will suffice. At this time, we are not applying for a loan; we are seeking an expression of probable interest conditional upon awarding of the license and good credit at the time of an actual application. I am enclosing a sample letter which reflects the general spirit of that which we seek from Mechanics and Farmers Bank. Of course, any statements of interest or intent would not be binding on either of us at this time.

Needless to say, we are very excited about the project and we hope the bank will come to share our enthusiasm. If you need additional information, please give me a call at 682-5853. Alternatively you can reach Donald Baker at 688-1407. I may have to be in Washington on the 7th of July (The FCC filing deadline). In that event, I will call you just to see if you have tried to reach me.

Thanks for your help thus far. We look forward to your response.

Sincerely,

Jim Lee
Managing Partner
Interactive Media

Enclosures: 1) Business Plan
2) Sample Letter

[IA Remand Ex. 4 at 56-67.]

In addition to the Five-Year Plan, Lee enclosed a sample loan letter prepared by IA's counsel, which read as follows:

BANK'S STATIONERY

Date

Jim Lee, President
NEWCORP, Inc.
Address
Raleigh, N.C.

Dear Mr. Lee:

This letter confirms the conditions under which (name of bank) will provide a loan to NEWCORP, Inc. (NEWCORP) to construct and operate an FM station to serve Raleigh, North Carolina and surrounding communities. (Name of bank) is familiar with NEWCORP's business plans for its proposed station. Accordingly, (name of bank) is willing to make a term loan in the amount of $_____ for the construction and first three months' operation of the station. This loan commitment is not contractually binding on the bank, however, and is subject to the following conditions:

1. The loan is expressly conditioned on receipt by NEWCORP of a construction permit for the station from the Federal Communications Commission.

2. The loan will be for a term of not fewer than years, payable monthly. The interest rate would float at $_____% above (the prime rate) or (the bank's base rate).

3. (Name of bank) shall be satisfied with NEWCORP's financial condition at the time the loan is made. At that time, (name of bank) will require submission of all information customarily and usually required of its borrowers.

(Name of bank) looks forward to working with you and your company on your broadcast venture.

Yours truly,

(Name and Title of Bank Officer)

[IA Remand Ex. 4 at 17, 58; IA Remand Ex. 1 at 2.]

69. The July 2 letter to Bass also included completed financial statements from Lee and Baker. Lee's statement indicated that for the year ended December 1985 his income was $8,010. His liquid assets amounted to $20,000 cash and $13,271 in stocks. He also owned real estate which he valued at $60,000. Baker's income was $24,000. He had $20,000 in cash, $900 in life insurance, $2,000 in stocks and bonds, and real estate he valued at $98,000. The properties were encumbered by $50,950 in mortgages and Baker owned an additional $4,388 in obligations to creditors. IA Remand Ex. 4 at 59-62.

70. Bass reviewed the materials submitted and, according to Lee, "said he would take care of the matter right away. We reviewed the draft letter and Mr. Bass assured me that he saw no problem in making the commitment." IA Remand Ex. 1 at 2. On cross-examination, Lee acknowledged that when he left the meeting he had no "commitment letter" and no express promise from Bass that he would issue the sample letter to IA. In fact, the letter issued by M&F on July 11, 986, "did not conform with the draft bank letter." Tr. 2158-2162. Bass recalled only that at the end of the meeting, he told Lee he would go over the information "and make a determination as to whether or not the bank would have an interest in participating further in the financing of the FM station, provided he were successful. I think Mr. Lee assured me at that particular point that what he needed was a letter of interest, and not an actual firm commitment." IA Remand Ex. 4 at 21-22.[16]

71. At their July 2 meeting, Bass and Lee also discussed the bank's expectations regarding the loan's terms. They discussed an interest rate over prime and a term of approximately ten years. Further, they discussed collateral that the bank might require, including the real estate owned by Lee and Baker, the securities owned by Lee, any equipment owned by IA, and possibly the station itself. As to the last, because the bank understood that IA's equipment would be "financed." M&F wanted both "a junior position in the equipment" and "an assignment of the license if possible." Bass testified that a pledge of stock was possible (IA identified itself as a corporation or a corporation to be formed in the Five-Year Plan), but "I don't necessarily recall that particular scenario . . . ." Tr. 2162-2163, 2170-2171; IA Remand Ex. 1 at 2-3. IA Remand Ex. 3 at 13-16, 28, 66.[17]

72. Bass and Lee also discussed the need for personal guarantees and current financials when the loan would be taken down. They talked about a moratorium on all payments during the first three months of operation, with interest payments phased in later, and then still later, principal and interest payments. IA Remand Ex. 4 at 14; Tr. 2171.

73. Later on July 2 or July 3, 1986, Bass called Lee and requested a correction in an error in Baker's financial statement. Lee contacted Baker, got a correct copy, and delivered it to Bass on July 3. Lee recalled that Bass again gave him verbal assurance that "IA's proposal was very attractive and that he would expedite the preparation of the letter we needed." But Lee received nothing in writing and, had "no specific recollection" of Bass' statements. At his deposition, Bass did not recall this specific meeting at all. IA Remand Ex. 1 at 3; IA Remand Ex. 4 at 22-26; Tr. 2203-2208.

74. Lee did not speak to Bass again until after Lee certified to IA's financial qualifications on July 7, 1986. On July 11, after returning from Washington, Lee called Bass and asked if he could get the loan letter. Bass told him that it would be ready and Lee picked it up that day. The letter read as follows:

July 11, 1986

Mr. Jim Lee, President
Interactive Media, Inc.
130 Nelson Street
Durham, N.C. 27707

Dear Mr. Lee

Thank you for allowing Mechanics and Farmers Bank an opportunity to review your proposal for development of a new FM Radio Station in Raleigh, North Carolina. Based upon the preliminary information supplied to us, Mechanics and Farmers Bank would be pleased to consider further the financing of this project. It is our understanding that a loan of $150,000.00 would be needed to complete the funding requirements should Interactive Media, Inc. be awarded the license.

As soon as you are able to provide us with a final package to include:

1) Current financials on Interactive Media, Inc., to include pro forma balance sheet, five year cash flow projections and profit and loss statement projections.

2) Final sources and funds usage statement.

3) Commitments or letters of interest from advertisers to cover 80% of first years sales projections.

The bank will be in a position to offer a final commitment. It is our understanding that this would be a secured transaction and acceptable collateral would be offered to

[16] Bass also noted that he believed that he needed to consult with M & F's President before getting back to Lee because his loan authority did not permit him to approve the letter unilaterally. Bass recalled consulting with the President after his second meeting with Lee. (*Id.* at 24-25.)

[17] Lee recalled that using the license as collateral was a "possibility" if the other "firm" elements specified above were insufficient. Tr. 2169-2170. Baker's understanding was that only the real estate would be required, but that the license was available if needed. Tr. 2395, 2405.

the bank. The loan terms would be based on the collateral offered, but we feel that those outlined in your proposal are agreeable to us.

We again thank you for allowing us the opportunity to consider this proposal.

Sincerely,

Albernard Bass, Jr.
Vice President

[IA Remand Ex. 4 at 99.]

75. Bass could not recall specifically why he modified IA's sample loan letter, "other than I didn't completely like all of the language that was contained in the original sample letter." *Id.* at 26. He "went through it to see what I could live with and what I could not, and then made necessary changes ..." *Id.* at 33. The letter was not reviewed by M&F's President. *Id.* at 34. Bass addressed the letter to Interactive Media, Inc., because he understood that the borrower would be a corporation. The language regarding "funds usage" reflected the bank's concern that it "knew basically where our loan funds were going to go." *Id.* at 27-28. The advertising commitments were required to supplement projections so that M&F could see "something that has some teeth in it." *Id.* at 29.

76. The July 1986 letter did not reflect a commitment or a "final credit judgment." *Id.* at 29-30. Such an undertaking would have required the information in the "letter or interest" and an agreement on collateral and final terms. *Id.* at 30. Rather, the July 1986 letter "reflected an expression of interest in the bank's participating in the financing...." *Id.* at 29.

77. In January 1989, Lee contacted Bass and told him that the bank needed to restate its interest to reassure the Commission. Further, M&F and IA "had to talk a little more about terms." *Id.* at 35-36, 42-43. The bank then issued two additional letters, the latter and final one responding to a proposed draft modification of the first letter by IA's counsel. The final letter, issued January 26, 1989, read as follows:

Mr. James Lee, Partner
Interactive Media
130 Nelson Street
Durham, NC 27707

Dear Mr. Lee:

This letter is to restate and amplify upon our commitment of July 11, 1986 and to confirm that Mechanics and Farmers Bank will provide a loan to Interactive Media to construct and operate an FM station to serve Raleigh, North Carolina and surrounding communities.

The availability of the loan, at the time proceeds are requested, is subject to your having an FCC construction permit for the station and submission of then-current financial information, of the type normally required of our borrowers, which financial information was detailed in the July 11th letter under the description of the "final package" to be presented to the bank.

Prior to issuing the July 11th commitment, we reviewed financial information supplied by you and Mr. Baker in connection with your proposed five-year business plan. Based on that information, we issued the July 11th letter, and thereby gave you reasonable assurance of the availability of a term loan in the amount of $150,000.00. However, the July 11th letter neglected to recite our agreement with the bank is not contractually bound by the bank's provision of this reasonable assurance of financing; it also was incomplete with respect to the exact term of the loan, the interest rate and the payment conditions. The bank's reasonable assurance of financing is not contractually binding, the term of the loan would not be for fewer than ten years, the interest rate would float at one percent above the prime rate, and the first monthly payment of principal and interest would fall due three months after the station commences operation. The collateral requirement would be reviewed at the time proceeds are requested; but, as noted in the earlier letter, those described in your proposal appear acceptable to us.

I trust that this clarification will prove helpful in Interactive Media's pursuit of a station at the FCC, and that we can assist the partnership with station financing and other financial services in the near future.

Sincerely,

Albernard Bass, Jr.
Senior Vice-President
Loan Administration

[IA Remand Ex. 4 at 42-48, 104-105.]

78. Bass agreed that M&F had still not made a final credit decision or agreed to make a loan in January 1989: "The only thing that we've done is expressed an interest in providing financial subject to our underwriting guidelines and those things that we had discussed and were outlined in the original proposal." *Id.* at 49. Asked if a credit evaluation had been made, Bass observed: "At this particular point, we were no further along than we were on July 11, 1986." *Id.* at 48. The possibility remains that M&F may not make the loan. *Id.* at 49-50. Also, while the bank has now outlined most of the terms of the loan proposal, Bass' understanding regarding collateral remains ambiguous. While Lee's and Baker's real estate and Lee's securities have been "discussed," "...we also discussed the station itself." *Id.* at 51.

CONCLUSIONS

PBCs' Financial Qualifications

79. A fundamental requirement of the Communications Act is that an applicant for broadcast facilities must be financially qualified to build and operate the station it seeks. 47 U.S.C. § 308(b). In order to demonstrate it was financially qualified at the time of certification, an applicant must meet a two pronged test. First, "the applicant must adduce probative evidence that, prior to certification, it engaged in serious and reasonable efforts to ascertain predictable construction and operation costs." Equally important, an applicant must have "reasonable assurance" of sufficient net liquid assets on hand or sufficient funds available from committed sources to construct and operate

the proposed station for three months without revenue. *Northampton Media Associates,* 4 FCC Rcd 5517, 5519 (1989). PBC has failed to meet its burden of establishing that its financial showing meets these requirements.

80. In his May 12, 1986 written budget, Peebles projected construction costs of $148,824.00 and three months operating costs of $51,096.00 for a total cost of $199,920. However, Peebles assumed, mistakenly, that the total cost would be only $176,318. Peebles reached this erroneous conclusion by omitting all monthly expenses except salaries.

81. The total costs reflected in the May 12, 1986 budget was predicated on the purchase of broadcast equipment and the use of a 300 feet guyed tower. Peebles' financial certification executed July 2, 1986, assumes the leasing, rather than purchase of broadcast equipment. It also assumes the use of a far more expensive 373 foot self-supporting tower. Peebles' earlier cost estimate was marred by a mistake in arithmetic. Peebles' cost estimate at the time of certification suffers from more significant defects. As discussed below, Peebles' costs have been grossly understated.

82. Based on the May 12, 1986 written budget and assuming the lease of equipment and the use of a guyed tower, PBC's costs would total $106,596. Peebles urges, however, that PBC's total costs are $57,000. Peebles states further that PBC's $85,000 cost estimate includes a $28,000 cushion for unknown and unexpected expenses. Peebles claims to have abandoned the May 12 budget and to have drafted a new, revised budget. Peebles did not keep a copy of this handwritten document and the accounting firm, Ernst & Whinney, to whom he claims he gave the original, apparently lost or destroyed the document.

83. Peebles asserts that the Ernst & Whinney projections, purportedly derived from the missing second budget, constitutes the budget he relied on in certifying PBC's financial qualifications. Specifically, Peebles claimed that the category "General and Admin. Expenses" encompassed PBC's entire projected construction and three months operating costs. These figures total $25,231 x 3 or $75, 693.

84. Peebles' contention is contradicted by the Ernst & Whinney report and is not credible. Peebles claimed that he reached the $85,000 cost estimate (including the $28,000 cushion) by making staff reductions and pointed to the $5,033 a month in salaries reflected in the Ernst & Whinney projections. However, contrary to Peebles' assertion, the operating costs reflected in the Ernst & Whinney report show an increase, rather than a decrease, in salaries. The $75,693 figure does not include the additional salary costs for "selling expenses" amounting to $13,749. Thus, Ernst & Whinney projected three months operating expenses of $89,442, which by itself exceeds PBC's total construction and three months cost estimate of $85,000 even if PBC's $28,000 in considered.

85. Moreover, despite Peebles' assertion that all construction costs were included, it is clear that the Ernst & Whinney report deals solely with projected income and operating expenses. The only reference to construction costs which Peebles could point to in the report was a $1700 "rent" figure which Peebles conceded referred to the monthly lease cost quoted in the Harris letter. Also, it is inconceivable that a national accounting firm would include one time capital construction costs in an "operating" expense category and then repeat those costs through every month of a projected first year of operations. Accordingly, the record requires a conclusion that in addition to the operating costs of $89,442 described in the Ernst & Whinney report, PBC would have to expend funds for construction costs and as detailed in finding 19, such costs would equal or exceed the $40,000 Peebles budgeted for construction and miscellaneous costs in his May 12, 1986 budget.

86. Finally, Peebles' estimate of the cost of leasing a 370 foot self supporting tower has not been substantiated and cannot be accepted. The record supports the conclusion that the $1700 monthly estimate given to Peebles applies only to the 300 feet guyed tower initially contemplated by Peebles, and not to the far more expensive self supporting tower. Peebles, who has the burden of proof, offered no evidence to support his contention that the required tower could be leased at the estimated cost. Scott Martin's testimony, which the Presiding Judge finds credible, makes clear that Harris' $1700 estimate contemplated a "typical" Class A FM station with a 300 foot guyed tower. Martin, a disinterested witness, had no reason to lie about his dealings with Peebles. Further, his expertise and experience regarding equipment costs has not been challenged. Also, the equipment proposal itself, referring only to a 300 foot guyed tower and emphasizing that no cost estimate had been obtained for the tower PBC needed, corroborates Martin's testimony. While the record does not permit a conclusion as to the actual cost in 1986 of a self supporting tower, it is clear that such a tower would substantially increase PBC's costs, even assuming a lease of a self supporting tower was feasible.[18] PBC's failure to prove that its projected costs were meaningfully ascertained is, standing alone, grounds for denial of PBC's application. *Victorson Group, Inc.*, 6 FCC Rcd 1697, 1700 and cases cited therein. (Rev. Bd. 1991).

87. The Review Board's remand focused on the availability of the $85,000 line of credit from the Mechanics and Farmers Bank upon which PBC relied for its certification of financial qualifications. However, even assuming that line of credit was accepted,[19] the $85,000 credit available falls far short of the amount needed by PBC to construct and operate the proposed station. In sum, PBC has substantially understated its costs and failed to show the availability of sufficient funds to construct and operate the proposed station. It is, therefore, concluded that PBC was financially unqualified at the time of certification.[20] [21] It is

[18] Since PBC did not contact a tower leasing company in 1986, the availability of such a lease to PBC in that time period is not known.

[19] On the basis of the testimony of Sidney Green, the bank official responsible for the bank letter, the test enunciated in *Scioto Broadcasters Limited Partnership*, 5 FCC Rcd 5158, 5160 (Rev. Bd. 1990) appears to have been satisfied. Thus, the qualifications of the borrower has been fully reviewed by the bank, adequate collateral to the satisfaction of the bank has been demonstrated, the tentative terms of the loan have been identified and are satisfactory to Pete and Inez Peebles.

[20] PBC's 1989 bank letter is of no consequence and was not considered. As noted by the Board in its Remand, a modified financial proposal cannot be relied on in the absence of a showing that the applicant "had reasonable assurance of necessary financing at the time it filed its application." *Aspen FM, Inc.*, 6 FCC Rcd 1602, 1603 (1991).

unnecessary to reach the more subjective question of whether PBC knowingly intended to deceive the Commission when PBC certified it was financially qualified. *Aspen FM, Inc.*, 5 FCC Rcd 3196, 3199 (Rev. Bd. 1990); *Janice Faye Surber*, 5 FCC Rcd 6155, 6159 (Rev. Bd. 1990).

IA's Site Availability

88. The Communications Act mandates that an applicant must in good faith have reasonable assurance of the availability of its transmitter site for the intended use at the time it files the application. *Port Huron Family Radio, Inc.*, 4 FCC Rcd 2532, 2534 (Rev. Bd. 1989). Although reasonable assurance may be acquired in numerous ways, and does not require a binding agreement or absolute assurance, *62 Broadcasting, Inc.*, 4 FCC Rcd 1768, 1773 (Rev. Bd. 1989); *Genesee Communications, Inc.*, 3 FCC Rcd 3595 (Rev. Bd. 1988), there must at least be a meeting of the minds resulting in some firm understanding as to a site's availability. *Barry Skidelsky*, FCC 91R-115 (Rev. Bd. January 2, 1992) at 7-8. Stated another way, there must be "some clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for the use of the property as a transmitter site, on terms to be negotiated, and that he would give notice of any change of intention." *Id.*, quoting *Elijah Broadcasting Corporation*, 5 FCC Rcd 5350, 5351 (1990). "A mere possibility that a site will be available is not sufficient," *William F. Wallace and Anne K. Wallace*, 49 FCC 2d 1424 (Rev. Bd. 1974), nor is an applicant's wishful thinking based on a landowner's "vague willingness to deal" acceptable. *National Communications Industries*, 6 FCC Rcd 1978, 1979 (Rev. Bd. 1991).

89. Applying these standards to the instant case, the tower site issue must be resolved against IA. The overwhelming evidence establishes that IA did not have "reasonable assurance" of the availability of its proposed tower site at the time of certification. The site's owner, Austin, who met with IA's Lee on one occasion for thirty minutes two days before filing emphatically denied that he ever gave permission to utilize his small shopping center for a large, guyed tower. Indeed, he denied being informed of the actual nature of the proposal. He asserted to the contrary that he understood only a tiny ten-foot antenna not visible beyond the roof was being suggested, and in any event, he doubted a guyed tower of the size IA proposed could feasibly have been installed. Further, Austin would never have approved IA's proposed tower for aesthetic reasons.

90. Even Lee, try as he might to conjure up a meeting of the minds, was unable to assert (1) that he actually informed Austin of the height of IA's tower (indeed, when they met Lee himself did not know it); (2) that he actually was *told* that Austin would permit use of the tower, or specification of its use in IA's application, or would provide assurances that it would be available in 1986 or in the future; or (3) that they actually discussed any of the terms or conditions of the lease or the installation. This last concession is particularly incredible where an applicant proposes a 258-foot guyed tower on a twenty-foot shopping center roof. The proposal concededly would have required significant modifications in the building and a comprehensive structural analysis before construction. Moreover, as Austin testified, it would have raised the spectre of a visual eyesore "towering" above a retail outlet abutting residential areas and roads. Yet Lee's recollection of the key meeting, *all* that IA has to offer, was vague, inconclusive, and fell far short of meeting IA's burden. For instance, Lee plainly cannot even recollect with any certainty estimating to Austin how tall the tower would be. Lee recalls a lease price being discussed, but cannot state the price. He concedes, in any event, that it was for an entirely different site and tower proposal.

91. The circumstantial evidence is equally damning for IA. Lee received no documentary confirmation of reasonable assurance in 1986 or later. He paid no money nor did he offer to pay any money, and he did not request an option or agreement of any kind. He provided no documents -- no tower sketch, no copy of the application, no cost or technical data, no photographs -- to Austin in 1986 or thereafter. Neither Lee nor Baker nor any agent of theirs ever contacted Austin after the meeting until a motion to enlarge was filed two-and-one-half years later. In sum, IA has not shown it had "reasonable assurance" of the availability of its proposed tower site. For this reason, its application must be denied.[22]

IA's Financial Certification

92. The financial qualifications issue must also be resolved against IA. IA's cost estimates are deficient and not credible since they do not factor in the cost of erecting a 258 foot guyed tower or the cost of renting space at Quail Corners. These key components were not discussed with the site owner and IA's claim they could build at the shopping corner site for a cost within their pre-existing budgetary constraints has not been substantiated.

93. Also, IA has not demonstrated "reasonable assurance" of the availability of the $150,000 loan letter from the Merchanics & Farmers Bank. As the Board observed, the letter post-dated certification and was addressed to a corporation which did not, and does not, exist. Moreover, the letter merely stated that the bank was "pleased to consider further the financing of this project." The letter lacked key repayment, collateral and interest terms. Furthermore, IA has not met its burden under *Northampton* since no consensus on loan terms and conditions had been reached prior to certification. The testimony of Bass, the responsible bank official, makes plain that Lee and Bass had not discussed and orally agreed upon the terms of the proposed loan prior to July 7, the date of certification. As of the date of certification, it is apparent that Bass had expressed interest in funding IA's proposal and had commenced consideration of the proposal subject to the sub-

[21] In light of the dispositive deficiencies discussed, it is not necessary to reach the further contention of the parties that PBC failed to demonstrate reasonable assurance of the availability of an equipment lease. In this regard, Peebles did not contact a company which leases equipment until more than two years after certification.

[22] IA's failure to demonstrate the requisite reasonable assurance of a tower site at the time of certification moots consideration of the acceptance of IA's amendment to specify a new site. The law is clear that an applicant is not permitted to amend to a new transmitter site where it did not have reasonable assurance of the site specified at the time of certification. See the Board's *Remand MO&O*, FCC 91R-90, paragraph 15 and cases cited therein.

mission of further information. However, Bass had not indicated that IA had reasonable assurance of the loan or that M & F was willing to make the loan. Nor had he agreed to the key terms of the loan on behalf of M & F. In fact, in his July 11 letter, Bass imposed stringent new terms on IA of which no assurance of compliance could be given in July 1986. For example, Bass required commitments from advertisers to cover 80% of first year sales projections. In sum, as of certification, Lee and Bass had no meeting of the minds and the M & F bank letter can not be credited. Since IA's cost estimate was not meaningfully ascertained and is substantially understated and since IA has not demonstrated "reasonable assurance" of sufficient funds to construct and operate the proposed station, it is not financially qualified.[23]

Comparative Re-Evaluation

94. The Initial Decision released December 5, 1989 (FCC 89D-55) granted PBC's application. However, PBC, as well as IA, have been disqualified and a new permittee needs to be selected. Bernard Dawson (Dawson) who was ranked second, is now the comparative winner.[24]

Accordingly, IT IS ORDERED, That unless an appeal from this Further Supplemental Initial Decision is taken by a party, or it is reviewed by the Commission on its own motion in accordance with Section 1.276 of the Rules,[25] the application of Bernard Dawson for a construction permit for a new FM station on Channel 275A in Raleigh, North Carolina IS GRANTED; and the applications of Henry R. Malloy, Jr. d/b/a Rem Malloy Broadcasting, Peebles Broadcasting Company, James S. Lee and Donald L. Baker d/b/a Interactive Media, Free Air Corporation and Special Markets Media, Inc. ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph Chachkin
Administrative Law Judge

[23] Since IA has been found to be not qualified, it is not necessary, as discussed, *supra*, to reach the misrepresentation issues added against IA.

[24] The Initial Decision ranked the applicants proposing 100% integration credit in the following order: 1 - PBC, 2 - Dawson, 3- IA, 4 - Malloy. See *Integration Summary*, paragraph 72. In this connection, Special Markets Media, Inc., which also proposes 100% integration, has been disqualified. See *Supplemental Initial Decision*, 6 FCC Rcd 2247, released April 24, 1991.

[25] In the event exceptions are not filed within 30 days after the release of this further supplemental initial decision, and the Commission does not review the case on its own motion, this further supplemental initial decision shall become effective 50 days after its public release pursuant to Section 1.276(d)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Request of Dial Page, Inc.
To Waive Sections 90.621(a)(iv),
90.621(b), 90.627, 90.631(e) and
90.631(f) of the Commission's
Rules to Operate a Wide-Area
800 MHz Digital Trunked SMR

ORDER

Adopted: December 2, 1992; Released: December 4, 1992

Comment Date: October 30, 1992 (Expired)
Reply Comment Date: December 4, 1992

By the Chief, Land Mobile and Microwave Division, Private Radio Bureau:

1. On June 22, 1992, Dial Page, L.P.[1] ("Dial Page") filed a request to waive the Commission's rules to implement a wide-area 800 MHz digital trunked Specialized Mobile Radio (SMR) system in nine southeastern States. This waiver request was placed on public notice, with initial deadlines of September 30, 1992 for comments and October 19, 1992 for reply comments.[2]

2. On September 25, 1992, the American Mobile Telecommunications Association, Inc. (AMTA) filed a request to extend the comment period in this matter. This request was granted.[3] On October 15, 1992, the National Association of Business and Educational Radio, Inc. ("NABER") filed a request to further extend the comment period. A limited additional time to file comments and reply comments was granted in response to that request.[4] Comments were due on or before October 30, 1992. Reply comments were due on or before November 20, 1992.

3. Dial Page has filed a Motion for Extension of Time dated November 19, 1992. Dial Page requests that the time to file its reply comment be extended to December 4, 1992 because Dial Page is currently in contact with the commenters with the hope of reaching an agreement to meet their stated objections to its waiver requests. Dial Page indicates that an extension of time to reply will enable Dial Page to continue its discussion with the commenters and could permit a resolution of their objections that would allow a more expeditious resolution of the waiver requests.

4. For good cause shown, and because it will further the proper dispatch of Commission business,[5] we find that it is in the public interest to permit additional time to file reply comments.

5. ACCORDINGLY, pursuant to Sections 0.131, 0.331, and 1.46 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331 and 1.46, IT IS ORDERED that the time for filing reply comments in this matter is extended to on or before December 4, 1992.

FEDERAL COMMUNICATIONS COMMISSION

Richard J. Shiben
Chief, Land Mobile and Microwave Division
Private Radio Bureau

[1] Dial Page L.P. became Dial Page, Inc. on November 13, 1992.
[2] Public Notice, 57 Fed. Reg. 39684 (September 1, 1992).
[3] Order, DA 92-1345 (September 30, 1992).
[4] Order, DA 92-1442 (October 20, 1992).
[5] Section 4(j) of the Communications Act of 1934, 47 U.S.C. § 154(j).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-337
Phase II

In the Matter of

Regulation of International
Accounting Rates

SECOND REPORT & ORDER AND SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: November 5, 1992; Released: November 27, 1992

Comment Date: February 5, 1993
Reply Comment Date: March 8, 1993

By the Commission:

I. INTRODUCTION

1. On May 23, 1991, we released the *Phase I Report and Order* in this proceeding affirming our commitment to reduce international settlement rates paid by U.S. carriers.[1] Toward this end, we also issued a Further Notice of Proposed Rulemaking requesting comments on proposed benchmark ranges for Europe and Asia, and on information concerning appropriate settlement rates for Africa and Latin America.[2] In this *Second Report and Order*, we adopt benchmark settlement rates for Europe, Asia, and other regions, and require that U.S. carriers file reports by January 1, 1993, and January 1, 1994, describing their success in negotiating settlement rates within our benchmarks with the European and Asian countries. We request carriers to provide additional information in their reports concerning their progress in negotiating lower settlement rates with countries outside the European and Asian regions. Finally, we continue to require proportionate return traffic and equal division of tolls but decline to condition Section 214 authorizations, at this time, as a means of lowering the accounting rates. We ask, however, whether conditioning Section 214 authorizations or allowing some flexibility in our nondiscriminatory accounting rate, division of tolls or proportionate return policies might be an appropriate means of achieving lower accounting rates as facilities-based competition is introduced in foreign countries.

II. BACKGROUND

2. In the *Phase I Report and Order*, the Commission affirmed that U.S. carriers are paying termination charges to foreign correspondents which are well above costs to many foreign telecommunications administrations to terminate U.S.-originated calls.[3] We recognized that further regulatory action may be necessary if, for example, a foreign telecommunications administration maintains a large dissymmetry in calling prices with the U.S., or maintains accounting rates that ignore relevant cost trends. We also concluded that the Commission has the authority to require that carriers cease and desist from charging, collecting and receiving, or particjpating in charges above a maximum accounting rate based on Sections 201(a), 201(b) and 205 of the Communications Act of 1934, as amended.[4] Further, the Commission recommended that the U.S. delegates to the International Telegraph and Telephone Consultative Committee (CCITT) seek certain revisions in existing and proposed CCITT Recommendations to bring accounting rates closer to the actual cost of terminating a call.[5]

3. We initially demonstrated our commitment toward reducing accounting rates by streamlining the notification and waiver filing requirements in the *Phase I Report and Order*. This simplified method expedites our approval process under which U.S. international carriers change their accounting rates. Second, we prohibited certain carrier restrictions on international private line resale as a means of exerting downward pressure on above-cost accounting rates for switched services.[6] Third, we directed U.S. carriers to negotiate lower, more cost-based accounting rates with their foreign correspondents, initially focusing on Asia and Europe.[7] And fourth, in the *Further Notice*, we proposed to require that U.S. carriers file progress reports detailing their success in negotiating lower accounting rates with Europe and Asia, by January 1, 1993.[8] The *Further Notice* also proposed that if the initiatives set forth in the *Phase I*

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[1] Regulation of International Accounting Rates, 6 FCC Rcd 3552 (1991) (*Phase I Report & Order*).

[2] Regulation of International Accounting Rates, Phase II, 6 FCC Rcd 3434 (1991) (*Further Notice*).

[3] The "accounting rate" refers to a rate negotiated between two correspondents on a particular international route which is intended to allow each correspondent to recover the cost of the respective facilities each has provided for terminating an international telex, telegraph, or telephone call. Most operating agreements provide that the two correspondents split the accounting rate 50/50. At settlement each correspondent nets the number of units of communication it originated against the number of minutes its correspondent originated. The correspondent that originated that longer number of units reimburses its foreign correspondent on the amount calculated by multiplying the net difference in units generally by one-half the accounting rate. Traditionally, the term "settlement rate" has been used to describe the rate of exchange by which an accounting rate is converted from one currency to another. More recently, "settlement rate" also has been used to refer to each correspondent's portion of the accounting rate, generally, one-half. As used in this the order, the term "settlements rate" refers simply to one-half of the accounting rate.

[4] *Further Notice* at 3436.

[5] *Phase I Report & Order* at 3555. The CCITT is the telecommunications standards committee of the International Telecommunications Union (ITU), a United Nations affiliated organization comprised of telecommunications ministries and companies from around the world. Study Group III of the CCITT analyzes tariff and accounting principles, and submits recommendations to be voted upon by the ITU members.

[6] Regulation of International Accounting Rates, 7 FCC Rcd 559 (1991) (*Phase II Report & Order*).

[7] *Phase I Report & Order* at 3555.

[8] *Further Notice* at 3436.

Report & Order fail to result in substantial accounting rate reductions, we may (1) establish settlement rates which are just and reasonable, (2) condition Section 214 authorizations, and (3) deviate from proportionate return traffic and equal division of tolls.[9]

III. DISCUSSION

4. In this decision, we adopt benchmark settlement rates for Europe at $0.23-$0.39 per minute, and for Asia and other regions at $0.39-$0.60 per minute. These benchmark figures represent our conservative estimate of an appropriate range for settlement rates, based on the underlying costs to terminate international calls. We also require that the five U.S. international facilities-based carriers that generated over $25 million in international message telephone service (IMTS) revenues in 1991 file progress reports by January 1, 1993, and January 1, 1994. These reports should indicate their success in bringing their settlement rates within the Commission's benchmark ranges for Europe and Asia. We also request that these reports include any information U.S. carriers may have on accounting rate reductions for countries outside of the European and Asian regions. Finally, we determine that U.S. carriers should continue to comply with the traditional International Settlements Policy (ISP)[10] principles of proportionate allocation of return traffic and equal division of tolls, and that no additional conditions to 214 authorizations should be imposed, at this time, as a means of facilitating lower accounting rates. We also adopt a Second Further Notice of Proposed Rulemaking requesting comment on whether allowing some flexibility in our nondiscriminatory accounting rate, division of tolls or proportionate return policies, or conditioning Section 214 authorizations, might be an appropriate means of achieving lower accounting rates as facilities-based competition is introduced in foreign countries.

A. Benchmark Settlement Rates for Europe.

(1) The Notice.

5. The *Phase I Report & Order* and the *Further Notice* stated that U.S. carriers should be paying approximately half their current settlement rates and that a reasonable and conservative per-minute settlements range for Europe appeared to be between 0.165 to 0.275 special drawing rights (SDRs)[11] ($0.23-$0.39).[12]

(2) Positions of the Parties.

6. There is a broad consensus among the majority of commenters that the Commission should take affirmative action to reduce accounting rates to reflect the actual costs for terminating a U.S. originated call in a foreign country. Indeed, many of the commenters believe that the Commission's proposed benchmark settlements range for Europe, $0.23-$0.39, is justified. They assert that estimated ranges have helped bring the accounting rates in these areas closer to costs by providing a negotiating target and an additional incentive on the part of the U.S. carriers and their foreign correspondents to reduce the present accounting rates.[13]

7. Some commenters maintain, however, that the Commission's proposed rates are unsubstantiated and should not be used as benchmarks. They posit that accounting rate negotiations are influenced by a variety of factors which differ depending on the country and the carrier involved.[14] Televerket (Swedish Telecom Group), for example, has arrived at a benchmark for Europe of 0.626 SDRs.[15]

(3) Discussion.

8. We adopt the benchmark settlement rate range for Europe of $0.23-$0.39. The record indicates that this benchmark is reasonable and conservative. By setting this benchmark, we do not intend to prescribe accounting rates for any country or region; rather this benchmark range represents a guideline for the amount which the Commission believes U.S. carriers should be paying foreign correspondents to terminate calls from the U.S. It is our expectation that this guideline will help U.S. international carriers and their foreign correspondents to negotiate significant reductions in accounting rates in the immediate future.

9. Although the record suggests that progress has been made in obtaining lower accounting rates since 1988,[16] further accounting rate reductions are essential. Without such reductions, international collection rates in other countries will remain high, and the U.S. carriers' net settlements outpayments will continuePto increase.[17] A recent study by the Common Carrier Bureau reveals that calling charges for service to the United States are as much as eighty percent higher than calling charges for services from the

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[9] *Further Notice* at 3436 and n.28.

[10] The ISP requires uniform settlement rates, accounting rates and division of tolls for U.S. international carriers on parallel routes. *See Implementation and Scope of Uniform Settlements Policy for Parallel International Communications Routes*, 51 Fed. Reg. 4736 (1986); *Reconsideration*, 2 FCC Rcd 1118 (1987); *Further Reconsideration*, 3 FCC Rcd 1614 (1988).

[11] An SDR is a basket of currencies established by the International Monetary Fund. An SDR has an average value of $1.40.

[12] *Further Notice* at 3436; *Phase I Report & Order* at 3555.

[13] *See generally*, MCI Comments at 6-7; NARUC Comments at 3; NTIA Comments at 1; AT&T Comments at 28. MCI argues, however, that the competitive process, not accounting rate reductions, is the primary force responsible for lower U.S. collection rates. MCI (Comments at 12. Capital Records adds that the Commission should not limit the proceeding to IMTS, but should also consider the negative impact of non-cost based international satellite TV service rates as well. Capital Records Comments at 3, 7-9.

[14] "Such parameters could range from the financial condition or internal stability of the foreign country to the nature of the individuals doing the negotiations." GTE Comments at 9, n.11. *See also* TRT/FTC Comments at 5-6; CWCI Comments at 6.

[15] Televerket Comments at 7. Televerket recommends distance sensitive accounting rates. *Id.* at 8.

[16] A positive shift in the number of accounting rate reductions occurred in 1988 when the Commission first decided to study settlement payments and IMTS accounting rates. The number of reductions in 1988 more than doubled in comparison to the previous two years and remained at the higher level through 1991. *See* K. Stanley, "A Review of IMTS Accounting Rates from 1985 to 1991," p. 4-6, Industry Analysis Division, Common Carrier Bureau (*Accounting Rates Study*). *See also* AT&T Comments at 28.

[17] The large and rapidly growing net settlement payment for international message telephone service from U.S. international common carrier to foreign communications administrations reached $3 billion in 1990. *Accounting Rates Study*, p. 1.

United States to other countries.[18] The study also indicates that international telephone service charges are substantially higher than long distance charges for calls of comparable distances within a foreign country. The results of the study show that the Commission must continue its commitment to foster lower, more cost-based accounting rates as a means of attaining lower calling prices worldwide, and reducing our net settlements deficit.[19]

10. Unchallenged accounting rate information for long-distance IMTS calls indicates that intra-European rates range between $0.47 and $0.78.[20] These intra-European rates are substantially below U.S.-European accounting rates. Moreover, according to the Tariff Group for Europe and the Mediterranean Basin (the TEUREM Group), the intra-European rates should be further reduced by as much as 50 percent by 1996.[21] Given the distance insensitivity of modern fiber optic cable and satellite transmissions, there is no legitimate cost justification for the wide disparity between intra-European accounting rates and U.S.-European accounting rates. The record indicates that U.S.-European accounting rates should be much closer to intra-European rates, and that the TEUREM recommendation for a 50 percent reduction by 1996 would also be appropriate for U.S.-European accounting rates. We believe, therefore, that the Europeansettlements range of $0.23-$0.39 adopted in this order is reasonable, and probably overly conservative.

B. Benchmark Rates for Asia and Other Regions.

(1) The Notice.

11. In the *Further Notice*, we proposed a settlement rate benchmark range for Asia at 0.275-0.42 SDRs ($0.39-$0.60). We also recognized that, although accounting rates in general were 50 percent above cost, we did not have reliable cost information for developing countries, at the time, and requested comments on an analytical framework for establishing reasonable benchmarks for Latin America and Africa.[22] This included the need to differentiate among nations within each region.

(2) Positions of the Parties.

12. Many of the commenters believe that the Commission's benchmark rates for Asia, as well as Europe, are justified.[23] They contend that benchmarks provide a sound basis for the U.S. negotiating posture.[24] AT&T, however, believes that the Commission's benchmark for Europe, between $0.23 and $0.39, should also apply to other regions.[25] AT&T contends that a uniform range more accurately reflects cost-based settlement rates. AT&T notes that its Cost Surrogate Study indicates that the intra-European and intra-Asian cost elements, for example, reveal few deviations.[26] PIn addition, AT&T posits that intra-regional settlement rates provide more accurate estimates of an appropriate benchmark range because they are generally negotiated between two monopolistic carriers, each side having equal bargaining power.[27]

13. Others argue that the settlements deficit for developing countries encompasses a myriad of factors, such as high immigration populations in the U.S. and different telecommunications cost structures, which make it difficult to determine accurate cost benchmarks for developing countries.[28] In addition, some commenters argue that in the Latin American regions, existing accounting rate arrangements provide the revenues necessary to develop the region's telecommunications infrastructure and are a major incentive to investors.[29] AT&T counters that the parties arguing for broad exemptions in achieving accounting rate reform with developing countries are misguided, particularly since 70 percent of AT&T's settlements outpayment in 1990 was made to developing countries.[30] Instead, AT&T proposes that the Commission could permit a developing country to reduce its accounting rates to benchmark levels over a longer period of time but only where, for example,

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[18] *See* Calling Prices for International Message Telephone Service between the United States and Other Countries, A Report of the Common Carrier Bureau to the Federal Communications Commission, Aug. 1992, (*1992 Calling Price Study)*. Ninety countries are included in the study. We have included this study in the public record in this proceeding.

[19] We acknowledge Capital Records' concern that non-cost-based rates for international satellite TV service exacerbate U.S. net outpayments. However, we believe this issue is beyond the scope of this proceeding.

[20] AT&T Phase I Comments at Appendix A. AT&T uses estimated intra-European accounting rates with appropriate adjustments for transoceanic facilities. *Id.* at 4. These accounting rates would yield settlements rates equal to our estimates of $0.23 to $0.39.

[21] Tariff Group for Europe and the Mediterranean Basin, Report TEUREM-R 2 (November 1990). *Phase I Report & Order* at 3556 and n.53.

[22] *Further Notice* at 3436. We asked for comment on whether there is a need to differentiate among nations within regions to reflect differences in factors that may affect the cost of providing telephone service in developing countries, such as: the degree of telephone penetration, both rural and urban; international oversight of infrastructure development plans; the relative importance of local, long distance and international traffic; and the distribution of international settlements payments. *Id.* at n.27.

[23] *See supra* note 13.3

[24] *See for example*, Sprint Comments at 10.

[25] In its comments, AT&T uses an accounting rate of $0.46 to $0.78, which is equal to our proposed settlements rate for Europe, $0.23 to $0.39. AT&T's analysis assumes that digital facilities will be in place in developing countries by 1993.

[26] *See* AT&T Comments at 28-33 and Appendix I. AT&T developed cost surrogates for each of three cost elements that foreign correspondents incur to terminate traffic: (1) international facility costs, based on the foreign administration's tariff rates; (2) switching costs, based on CCITT cost studies; and (3) costs (associated with local distribution or national extension, based on the foreign administration's tariff rates. AT&T contends that the foreign administration's tariff rates for switched messages are functionally equivalent to the international facilities and national extension used by the foreign administration to terminate international calls. *Id.* at 29-30. Several commenters express concerns about AT&T's analysis, noting that AT&T does not explain its sampling technique, and, therefore, a change in the mix of countries analyzed would lead to different results. *See* GTE Reply Comments at 6; GTT Reply Comments at 8-17. In addition, NTIA has reservations about the underlying methodology used in arriving at AT&T's proposed benchmarks and states that it is not confident that a single costing approach provides a reliable basis for determining costs in foreign countries. NTIA Reply Comments at 5-6.

[27] *See* AT&T Phase I Comments at Appendix A.

[28] GTE Reply Comments at 4-6; US Sprint Comments at 6; GTT Reply Comments at 8-11; MCI Reply Comments at 6; NTIA Reply Comments at 4; TRT/FTC Comments at 5.

[29] CANTO Comments at 3; GTT Reply Comments at 5-6; MCI Comments at 7.

[30] AT&T Comments at 25 and Reply Comments at 3-4.

the developing country has agreed with U.S. carriers to reduce accounting rates progressively over a time period beyond 1993.[31]

14. Finally, AT&T proposes that the Commission take no affirmative action until a U.S. carrier has been unsuccessful in negotiating a reduced accounting rate and has initiated a complaint process.[32] AT&T states that the complaint would advise the Commission of a U.S. carrier's inability to negotiate accounting rates toward the benchmark levels. After a 30-day review and comment period, the Commission could find that a directive to all U.S. carriers to terminate the service agreements, in accordance with their terms, is in the public interest.[33] AT&T believes that its proposed complaint process provides the Commission with the latitude necessary to achieve the benchmark settlement rates within a time period beyond 1993.[34]

(3) Discussion.

15. We believe the record confirms that the accounting rates between U.S. carriers and their foreign correspondents in Asia, Latin America, Africa, and other regions are well above cost. One indication of this is the wide disparity in accounting rates between the U.S. and countries within a particular region. For example, our records indicate that accounting rates between the U.S. and Latin American countries show disparities as high as 316 percent; and Africa and Asia show disparities of approximately 500 percent.[35] If indeed higher accounting rates in regions with similar infrastructures substantially reflect the higher costs of those infrastructures, then their accounting rate differentials should not be this great. In addition, the high end of the accounting rate ranges for South America remained unchanged, at $2.50 for the five year period between 1985 and 1991, and Central America's upper range declined by a mere $0.25 during the same period.[36] Further, because the cost of long distance digital and satellite transmissions are, to a great extent, distance insensitive, we believe that IMTS transmission costs are more uniform than is reflected in disparate accounting rates now in effect within each region.

16. We adopt our proposed Asian benchmarks of $0.39-$0.60. The record indicates clear support for these benchmarks. Moreover, this range is consistent with the increasing trend in accounting rate reductions in Asia since 1988.[37] We decline to adopt AT&T's argument that the benchmark range which we are adopting for Europe should also be applied to Asia and other regions because these regions include many developing countries that appear at this time to have cost structures which differ from the more developed European countries. Therefore, we will maintain a benchmark range for Asia which is distinct from that set for Europe.

17. We also believe it is necessary to establish a benchmark range for other regions to affirm that our commitment to reduce accounting rates to more cost-based levels extends beyond Europe and Asia. We base our benchmark settlement rate range for regions outside Europe and Asia on the Asia target benchmark range of $0.39-$0.60.[38] We believe this settlement rate range to be an appropriate benchmark for other regions because they are, like Asia, primarily comprised of developing countries with less sophisticated telecommunications infrastructures, as compared to European countries. Moreover, we note that many developing countries supported the recently-adopted CCITT Recommendation D.140, which states that, *inter alia*, accounting rates for international telephone services should be cost-oriented and should be applied on a non-discriminatory basis.[39] This support indicates that these countries embrace the commitment to lower accounting rates to cost-oriented levels over the five-year period set forth in Recommendation D. 140, which would bring their rates within the targeted range.

18. Based on the above, we find that a benchmark settlement rate range of $0.39-$0.60 provides a helpful target to be used in the negotiations process between U.S. carriers and foreign correspondents in all regions outside of Europe. We believe this range offers sufficient flexibility to account for differing cost characteristics among individual countries. Additionally, in developing countries there may be compelling circumstances that would affect the speed of the transition. We note, however, that although there may be substantial variations in costs among different countries, the record indicates that accounting rates for countries within Asia, are as much as two times higher than costs. We believe that countries in other regions are comprised of a similar mix of developed and developing countries, and also may have accounting rates as much as two times costs. We accordingly expect countries in all regions to reduce their rates by about 50 percent,[40] and to achieve these reductions in one to five years as set forth in CCITT Recommendation D.140. We expect most countries to reach this goal within the next two years.

C. Filing Progress Reports.

(1) The Notice.

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[31] "Infrastructure deficiencies persist despite years of above-cost accounting rates, and, in some cases, settlements payments are employed for purposes wholly unrelated to improving telecommunications services." AT&T Reply Comments at 8, n. *.

[32] AT&T Comments at 17. TRT/FTC agrees with AT&T's proposal that the Commission adopt a complaint procedure with certain modifications. TRT/FTC Reply Comments at 3-4.

[33] AT&T Comments at 16. If the Commission were to issue such a directive, it could prescribe the terms under which U.S. carriers could subsequently provide service. *Id.*

[34] AT&T Reply Comments at i.

[35] To cite just one such instance, we note that the average accounting rate for each of two Latin American countries located in the Caribbean is $0.60 and $2.50.

[36] *Accounting Rate Study*, p. 8. The average rates for these regions decreased slightly between 1985 and 1991. However, this was due mainly to decreases in the lower end of the accounting rate ranges for those regions.

[37] *See Accounting Rate Study*, p. 8.

[38] The U.S. carriers' January 1993 and 1994 submissions will allow us to examine the appropriateness of settlements rates benchmarks and transition periods for individual countries.

[39] Specifically, Recommendation D.140 urges cutting accounting rates to costs over a period of one to five years. CCITT Circular No. 169, COM III/ST, October 7, 1992 (*CCITT Circular*). Seven of the Latin American countries that voted for Recommendation D.140 reserved the right not to apply the recommendation until costs elements are defined and calculation methods are in place. *Id.* at 3.

[40] We believe that the conclusion reached in the TEUREM report that intra-European accounting rates should be reduced by 50 percent should be generally applied to other regions as well.

19. The *Further Notice* proposed that carriers file progress reports by January 1, 1993, indicating their success in reducing accounting rates toward the proposed benchmarks rates for Europe and Asia. The Commission sought comment on what information should be included in the January 1, 1993, reports to determine whether sufficient progress has been made.[41]

(2) Positions of the Parties.

20. Some commenters believe that attaching strict deadlines and penalties, i.e. the January 1993 date for lowering accounting rates to the Commission's set benchmark rates, may only limit the negotiating flexibility of the U.S. carriers, hindering the progress of the negotiations.[42] AT&T, GTE and NTIA, on the other hand, support the submission of progress reports, although GTE believes that the January 1, 1993, deadline may be too soon.[43] AT&T adds that the Commission should require the filing of a second progress report by January 1, 1994.[44]

21. NTIA expresses concern over the submission of a list of egregious cases where carriers are consistently unable to negotiate lower accounting rates.[45] It recommends that before a particular country is labeled as "egregious," the Commission should require U.S. carriers that encounter strong resistance in negotiating with their foreign correspondents to include a detailed examination of all factors related to above-cost accounting rates for each of those countries, such as the need to finance a country's infrastructure development.[46] This information would assist the Commission in establishing reasonable standards against which progress toward reducing accounting rates can be measured. AT&T agrees that deciding on the appropriate factors to determine whether a particular administration should be included on an "egregious" list requires a careful analysis of factors such as whether the traffic imbalance exceeds 60 percent outbound from the U.S., whether the accounting rate is above the benchmark ranges, and whether the growth in net settlements outpayments by U.S. carriers is 5 percent higher than in the previous year.[47]

(3) Discussion

22. We adopt our proposal to require that certain U.S. international facilities-based carriers file progress reports by January 1, 1993, indicating what success they have achieved in reducing accounting rates within the benchmark ranges for Europe and Asia.[48] We also agree that submission of a second report by the same carriers on January 1, 1994, would be beneficial, and adopt that recommendation. We believe that the submission of progress reports will encourage the establishment of rates within our benchmark ranges, and encourage further accounting rate reductions. They will also identify specific countries where there are major obstacles in negotiating lower accounting rates, which should be the focus of the Commission's attention. Finally, the data in the January 1, 1993 and 1994 reports, coupled with the progress made by CCITT Study Group III, will facilitate our continuing efforts to establish cost-based rates if the CCITT's initiatives and our present orders prove to be insufficient.[49]

23. We disagree with GTE's view that the Commission should not require the progress reports to be submitted by January 1, 1993. We believe that the proposal set forth in the *Further Notice*, released May 23, 1991, gave sufficient notice that the Commission may request this information by the proposed date. By requiring progress reports to be filed by January 1, 1993, the Commission can review the appropriateness of its targeted settlements ranges and implement changes at an early date, where necessary. In addition, only four countries have reduced their accounting rates within our benchmark range for Europe and Asia.[50] Therefore, it is essential that this Commission have an opportunity to examine the international carriers' progress reports as soon as possible so that we may decide what future actions may be necessary.

24. We also disagree with TRT/FTC's assertion that attaching strict deadlines for lower accounting rates will hinder the negotiations process. On the contrary, we believe that by highlighting the countries with which the U.S. carriers are having the most difficulty in negotiating lower rates with foreign correspondents, the reports will stimulate cooperation by the identified foreign correspondents rather than hinder the negotiations process. The filings will also place those foreign correspondents on notice that they may be the focus of future Commission action. However, we agree with AT&T and NTIA that to accurately examine the most problematic countries, the Commission should request specific information on circumstances surrounding the negotiation impediments before labelling a country as "egregious."

25. Accordingly, we direct certain U.S. international facilities-based carriers to include in their progress reports the following information for each country in Europe and

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[41] *Further Notice* at 3436.

[42] *See, for example*, TRT/FTC Reply Comments at 4.

[43] *See* AT&T Comments at 13; GTE Comments at 8; NTIA Reply Comments at 7-8. Sprint recommends that additional information which the Commission may require for establishing an analytical framework should include, for example, a comparison of collection rates from the U.S. versus collection rates from a foreign country for comparable services. Sprint Comments at 3-5. This information has already been compiled in the *Calling Price Study*.

[44] AT&T Comments at 13.

[45] NTIA Reply Comments at 7. NTIA states that "targeting" countries has trade policy implications, and is likely to raise comity and other foreign policy considerations. *Id.* at 8. *See also* GTE Comments at 9. GTE states "if a foreign correspondent rejects a request to lower its accounting rates after serious negotiations, that correspondent should not automatically be considered an 'egregious case,' nor should the U.S. carrier be classified as having achieved 'insufficient progress.'" *Id.*

[46] NTIA Reply Comments at 8, n.25.

[47] AT&T Comments at 14, n. **. AT&T also strongly recommends that the Commission make clear that "unlisted" administrations should not take solace in that status, or delay reforms they might otherwise pursue. Id. at n. *. *See also* AT&T Ex Parte letter dated October 2, 1992.

[48] We limit this reporting requirement to AT&T, MCI International, US Sprint, TRT/FTC Communications, Inc., and GTE-Hawaiian. These carriers each generated more than $25 million in IMTS revenues for 1991. Because these reports apply to nine or fewer persons, they are not subject to the collection of information requirements set forth in 44 U.S.C. §3507.

[49] We will also continue to foster facilities-based competition as a means for lowering calling prices. *See Phase II Report & Order*.

[50] These are the United Kingdom, Sweden, Australia and Singapore.

Asia: (1) the accounting rate; (2) the status of any pending accounting rate negotiations; (3) the number of years since the last accounting rate change; (4) outpayments made to each country versus total outpayments in that year; (5) if available, collection rates to and from the U.S. and the disparity between the two sets of rates; (6) information on whether the U.S. carrier is the initiator of the accounting rate reduction with a foreign correspondent; (7) a list of problematic countries where U.S. carriers have experienced limited success in negotiating accounting rate reductions; (8) information on the effects of services such as USADirect, MCI CALL USA, and Sprint Express, on the U.S. settlements deficit; (9) the percentage of inbound versus outbound traffic for each country; and (10) the growth in settlements outpayments from the previous year for each country, including, but not limited to, any information on the percentage of outpayments applied to infrastructure development plans, and percentage of settlement payments used for such plans. In addition, these U.S. carriers should submit similar information for countries outside the European and Asian regions, specifically developing countries. If the report includes a list of problematic countries, the U.S. carrier should describe the circumstances surrounding the negotiations problems. The reports shall be submitted to the Common Carrier Bureau, International Policy Division.

D. Proposed Alternative Regulatory Actions.

(1) The Notice.

26. The Commission invited comments on alternative regulatory actions which could encourage lower, more cost-based accounting rates. For example, the Commission stated it would consider proposals to: (1) depart from the traditional 50/50 division of tolls and reallocate return traffic which could ultimately increase outbound traffic to the U.S.; and/or (2) condition Section 214 authorizations to insure nondiscriminatory treatment of U.S. carriers.[51]

(2) Positions of the Parties.

27. The majority of the commenters maintain that there should be no disproportionate return traffic, and assert that the Commission also should continue to require an equal division of the accounting rate.[52] The commenters posit that disproportionate return traffic is generally viewed as a form of whipsawing because a foreign monopoly correspondent could favor one U.S. carrier over all others, as, for example, when the foreign correspondent has a corporate relationship with the U.S. carrier.[53] Further, they argue that it is not the responsibility of the U.S. consumers to subsidize developing countries. Some commenters also oppose skewing the current equal division of the accounting rate to favor developing nations as this action would increase the traffic imbalance to those countries.[54]

28. Other commenters believe that departures from proportionate return traffic requirements can serve the needs of developing countries as well as the public interest.[55] For example, ATN contends that a rigid application of proportionate return traffic would impede competition, and, therefore, would not be in the best interests of the U.S. ratepayer.[56] In addition, it asserts that deviating from a 50/50 split of the accounting rate to favor the developing countries would stimulate the inflow of U.S. dollars to developing countries, which are used to build their infrastructures. AT&T counters these arguments by stating that, although alleviating proportionate return requirements may allow one U.S. carrier into a new market, other U.S. carriers would subsequently be compelled also to forego proportionate return traffic--perhaps all to the benefit of the foreign correspondent's U.S. corporate affiliate.[57]

29. Some commenters support the Commission's proposal to attach conditions on Section 214 certificates filed by foreign-owned carriers, arguing that this action will help curb discriminatory conduct against U.S. carriers.[58] Others assert that the Commission's ISP enforcement mechanism and the submission of operating agreements sufficiently protects U.S. carriers from being disadvantaged by foreign telecommunications providers.[59]

(3) Discussion.

30. At this time, we will continue to require that U.S. international carriers accept only their proportionate share of return traffic and agree with their foreign correspondent to equally divide the accounting rate, including transiting fees.[60] We believe these conditions are necessary safeguards that limit the possibilities for discrimination against U.S. carriers. Where the U.S. market is competitive and the foreign correspondent operates in a monopoly environ-

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[51] *Further Notice* at 3436 and n.28.

[52] *See generally* Comments and Reply Comments of MCI, Sprint, and AT&T.

[53] AT&T Reply Comments at 11, n. *.

[54] MCI Comments at 8.

[55] GTE Comments at 7; ATN Comments at 2; and Sprint Reply Comments at 11. However, Sprint clarifies that disproportionate return flow should not extend to any of the Organization for Economic Co-Operation and Development (OECD) countries or other developed countries, including major Asian countries such as Singapore, Korea and Taiwan or to foreign administrations that have been privatized. Sprint Reply Comments at 12.

[56] ATN asserts that in the context of the International Settlements Policy, ISP, the Commission recognized potential dangers posed by uniform rules and emphasized a desire to facilitate the entry of U.S. carriers. ATN Comments at 10. *See also* US Sprint Reply Comments at 11.3

[57] AT&T Reply Comments at 13 and n. **.

[58] For example, MCI urges the Commission to attach conditions to Section 214 certificates of U.S. carriers that have entered into a relationship with a foreign correspondent that could produce an incentive to discriminate. *See* MCI Reply Comments at 10-11. *See also* PAS Comments at 4; US Sprint Reply Comments at 5-11; TRT/FTC Reply Comments at 6; CWCI Comments at 10.

[59] *See* British Embassy Comments at 2; NTIA Reply Comments at 13. NTIA states: ". . . it is not clear to NTIA that it would be constructive or, for that matter, lawful for the Commission to use the Section 214 process as a carrot or stick to attempt to induce other countries to adopt broadly liberalized regulatory regimes that meet the Commission's standards for what an appropriate regulatory approach should be." *Id.*

[60] Although the Commission continues to believe that carriers should have substantial flexibility in routing their traffic over international facilities, we remain concerned about accounting rate arrangements which are divided inequitably or which give one party greater than 50% of the accounting rate. *See* Implementation & Scope of the International Settlements Policy for Parallel International Communications Routes, *on recon.* 2 FCC Rcd 1118, 1122 (1987).

ment, a foreign correspondent retains the ability to leverage unfairly its competitive advantage in the U.S. market to the detriment of U.S. ratepayers.[61]

31. While we agree with ATN and GTE that a deviation from our ISP requirements might help developing countries improve their communications networks, we find that it would not serve the U.S. public interest overall. Proportionate return and equal division of tolls requirements are the principal mechanisms for protecting U.S. international carriers against whipsawing.[62] The requirements help to assure that an accounting rate reduction is a real reduction to the benefit of all U.S. carriers. Without these protective measures, an accounting rate reduction may be merely a sham by which a foreign carrier reduces its net settlements outpayments to the U.S. by shifting all of its outbound traffic to one U.S. carrier with which it has established a lower accounting rate. All other U.S. carriers would be forced to pay the higher settlement rates on U.S. outbound traffic without receiving the revenues from its proportionate return traffic. Therefore, lifting proportionate return and equal division of tolls requirements would erode our general public policy goals of preventing discrimination against U.S. carriers and reducing the U.S. net settlements outpayments. Finally, we do not find sufficient information in the record to demonstrate how we can deviate from proportionate return or equal division of tolls while adequately protecting against whipsawing.

32. We also refrain from conditioning Section 214 authorizations until we analyze the effects of CCITT Recommendation D.140 and the January 1, 1993, filings. Moreover, we recognize the concern raised by some parties that, at this time, applying additional conditions to Section 214 authorizations may not be the most effective mechanism for alleviating high settlement rates because it could discriminate against smaller carriers not yet authorized to serve most foreign points.

33. We note, however, that a number of foreign countries are moving toward introducing facilities-based competition for international services. In this context, we adopt a Second Further Notice of Proposed Rulemaking and ask for comment on whether allowing some flexibility in our nondiscriminatory accounting rate, division of tolls, or proportionate return policies might be an appropriate means of achieving lower accounting rates as facilities-based competition is introduced in foreign countries. Specifically, we invite suggestions on what modifications to our ISP policies might best achieve this goal. We additionally ask whether conditioning Section 214 authorizations where a competitive environment exists in a foreign country might also help to reduce accounting rates and request suggestions on how this may best be implemented.

E. International Telecommunications Union Regulations.

(1) The Notice.

34. In the *Further Notice*, the Commission sought comment on the extent to which Articles 6.1. and 6.2 of the International Telecommunication (ITU) Regulations could serve as the basis for seeking bilateral collection and accounting rate reductions between the United States and other ITU member countries.[63] We also recommended that U.S. delegations to the ITU's CCITT Study Group III seek certain revisions in the CCITT Recommendations.

(2) Positions of the Parties.

35. Most of the commenters support the use of bilateral negotiations as the primary means of achieving lower accounting rates, and agree with the Commission's proposal to utilize the CCITT as a logical forum to address account-

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[61] *See* AT&T Reply Comments at 14.

[62] Whipsawing is the ability of a foreign carrier to play U.S. carriers off against each other to the disadvantage of U.S. carriers and U.S. ratepayers.

[63] Article 6.1.1 states that:

> Each administration [or recognized private operating agency] shall, subject to applicable national law, establish the charges to be collected from its customers. The level of these charges is a national matter; however, in establishing these charges, administrations should try to avoid too great a dissymmetry between the charges applicable in each direction of the same relation.

See Article 6.1.1. The International Telecommunication Regulations, Final Act of the World Administrative Telegraph and Telephone Conference, Melbourne, Australia (Nov. 28 to Dec. 9, 1988).

Article 6.2.1 states that:

> For each applicable service in a given relation, administrations [or recognized private operating agency] shall by mutual agreement establish and revise accounting rates to be applied between them, . . . taking into account relevant CCITT Recommendations and relevant cost trends.

Article 6.2.1, *Id.*

ing rate reductions.[64] Norwegian Telecom states that the work of multilateral organizations such as the ITU "create[s] a common base of knowledge and an understanding of the issue.[65] In addition, NTIA believes that focusing on the accounting rates issue with the CCITT will provide a venue for accurately assessing the relationship between accounting rates and actual costs on a global basis.[66]

(3) Discussion.

36. On October 1, 1992, the CCITT approved Recommendation D.140 which states that accounting rates for international telephone services should be cost-oriented and should take into account relevant cost trends. The Recommendation also includes provisions to ensure nondiscrimination among international telecommunications operators.[67] We strongly support CCITT Recommendation D.140, and are confident that it will significantly affect foreign administrations' willingness to lower their accounting rates to cost-oriented levels within the specified one to five year time frame. Therefore, as expressed in this Order, we shall not take any unilateral actions, including establishing set rates or imposing additional regulations to foster lower net settlements outpayments, until we can evaluate the January 1993 filings and the effects of CCITT Recommendation D.140.

IV. CONCLUSION

37. We adopt our benchmark settlement rate ranges for Europe at $0.23 to $0.39, and for other regions at $0.39 to $0.60. We also adopt our proposal to require facilities-based U.S. carriers to file reports by January 1, 1993, describing their success in reducing accounting rates with European and Asian nations within our benchmark ranges. Second, we adopt the suggestion to require that these reports also be filed on January 1, 1994. We also request additional information concerning U.S. carriers' progress in negotiating lower settlement rates with developing countries. Third, we maintain our proportionate return traffic and equal division of tolls requirements to prevent discriminatory treatment of U.S. carriers, and decline to take any other specific actions aimed at achieving lower accounting rates until we have had the opportunity to evaluate the effects of recent initiatives to achieve lower rates. Fourth, we adopt our Second Further Notice of Proposed Rulemaking requesting comments on whether conditioning 214 authorizations or relaxing our nondiscriminatory accounting rate, equal division of tolls or proportionate return requirements would be appropriate where international facilities-based competition is in place in foreign countries.

V. ORDERING CLAUSES

38. Accordingly, IT IS ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory action described above, and that COMMENT IS SOUGHT on the proposals.

39. IT IS FURTHER ORDERED that, pursuant to Sections 1, 4, 201-205, 211, 215, 218-220, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154, 201-205, 212, 215, 218-220, and 303, AT&T, MCI, US Sprint, TRT/FTC Communications, and GTE Hawaiian shall file with the Common Carrier Bureau, Chief, International Policy Division, progress reports by January 1, 1993, and by January 1, 1994, containing the information detailed in paragraph 25 of this order.

40. IT IS FURTHER ORDERED that, pursuant to Sections 201-205 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 201-205, we adopt benchmarks for Europe at $0.23-$0.39 per minute settlement rate and $0.39-$0.60 for Asia and all other regions.

41. IT IS FURTHER ORDERED that the Second Report & Order and Second Further Notice of Proposed Rulemaking are hereby adopted.

42. For further information on this item contact Teresa Marrero, Attorney/Advisor, International Facilities Division, Common Carrier Bureau, (202) 632-3214.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A
Procedural Matters

I. Ex Parte Rules - Non-Restricted Proceeding

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

II. Initial Regulatory Flexibility Act

A. Reason for Action

This rulemaking proceeding is initiated to obtain comment regarding proposed modification of the Commission's nondiscriminatory accounting rate, equal division of tolls or proportionate return traffic requirements, and/or conditioning of Section 214 authorizations, where facilities-based competition for international services is available in foreign countries.

B. Objectives

The Commission seeks to determine whether modifying its International Settlements Policies or conditioning Section 214 authorizations to encourage reductions in accounting rates to cost-based levels would be apropriate in certain circumstances.

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[64] Capital Cities, for example, states that the ITU can be used to provide a necessary framework for establishing a single, consistent U.S. policy toward international communications pricing, including international television service. Capital Cities Comments at 8-9; *See also* Norwegian Telecom Comments at 1; NTIA Comments at 1 and Reply Comments at 10; US Sprint Comments at 5; Televerket Comments at 3-4.

[65] *See* Norwegian Telecom Comments at 1.

[66] NTIA Comments at 1.

[67] *See CCITT Circular.*

C. Legal Basis

The proposed action is authorized under Sections 1, 4, 201-205, 211, 214, 215, 218-220, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 211, 214, 215, 218-220, and 303.

D. Reporting, Recordkeeping and Other Compliance Requirements

None.

E. Federal Rules That Overlap, Duplicate or Conflict With These Rules

None.

F. Description, Potential Impact, and Number of Small Entities Involved

The proposals discussed in this *Second Further Notice of Proposed Rulemaking* may reduce regulatory requirements on international facilities-based common carriers that enter into operating agreements with foreign correspondents which include negotiated accounting rate.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

None.

III.Paperwork Reduction Act Statement

The proposals suggestions will not create any undue burden on the public.

IV. Comment Dates

Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before February 5, 1993, and reply comments on or before March 8, 1993. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to: Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Federal Communications Commission Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-337
Phase I

In the Matter of

Regulation of International
Accounting Rates

ORDER ON RECONSIDERATION

Adopted: November 17, 1992; Released: November 27, 1992

By the Commission:

I. INTRODUCTION

1. On May 9, 1991, the Commission adopted its First Report and Order in Phase I of the *Regulation of International Accounting Rates* proceeding (*Phase I Report and Order*) ,[1] in which we adopted certain procedural reforms to the Commission's International Settlements Policy (ISP).[2] MCI Telecommunications Corporation (MCI) and US Sprint Communications Company Limited Partnership (Sprint) filed petitions for reconsideration. In this Order, we deny Sprint's petition for reconsideration of our decision to apply the expedited notification and waiver procedures to packet and telex services and MCI's petition for reconsideration asking that the Commission approve only accounting rate reductions implemented simultaneously among all competing U.S. carriers.

II. BACKGROUND

2. In the *Phase I Report and Order*, the Commission took three steps to remove any U.S. regulatory impediments to the negotiation of lower, more cost-based international accounting rates. First, we established a notification option for carriers wishing to implement a simple accounting rate reduction,[3] in order to send an unequivocal message that it is Commission policy to encourage implementation of lower, cost-based international accounting rates.[4] To ensure that implementation of this policy encouraged the availability of lower accounting rates to all competing U.S. carriers and discouraged whipsawing, we: (1) permitted carriers to submit a notification with a retroactive effective date only where the carrier matched a previous notification by another carrier; (2) determined that we would continue to require the submission of waiver petitions in other cases involving a retroactive effective date; and (3) required that notifications be accompanied by sworn statements regarding non-exclusive availability of the accounting rate and proportionate share of return traffic.

3. Second, we streamlined the process for carriers to obtain waivers of the ISP to implement changes in the accounting rate. Specifically, we: (1) established definitive criteria for the grant of waiver requests;[5] (2) reduced from sixty to twenty-one days the time period after which a waiver of the ISP for telex and packet services would go into effect;[6] and (3) required carriers submitting waivers to submit the same sworn statements required of carriers using the notification procedure. Finally, we recommended that the U.S. delegation to the International Telecommunications Union's (ITU) International Telegraph and Telephone Consultative Committee (CCITT) seek revision of language in CCITT Recommendations to clarify that international accounting rates should be cost-based and nondiscriminatory.

III. PLEADINGS

A. Sprint's Petition for Reconsideration

4. Sprint requests that the Commission reverse its determination that telex and packet switched services are eligible for the expedited notification and streamlined waiver procedures. Sprint states that this proceeding was initiated to address the substantial and rapidly growing U.S. net settlements deficit, and that the application of the streamlined procedures adopted by the *Phase I Report and Order* to packet and telex services will only exacerbate the existing deficit, perhaps causing carriers to raise their collection rates to make up for revenue lost due to the decrease in incoming settlements payments. Sprint asserts

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[1] Regulation of International Accounting Rates, Phase I Report and Order, 6 FCC Rcd 3552 (1991) (*Phase I Report and Order*) .

[2] The ISP requires uniform settlement rates, accounting rates and division of tolls for U.S. international carriers on parallel routes. *See Implementation and Scope of Uniform Settlements Policy for Parallel International Communications Routes, Report and Order*, CC Docket No. 85-204, 51 Fed. Reg. 4736 (Feb. 7, 1986), *Reconsideration* , 2 FCC Rcd 1118 (1987) (*ISP Reconsideration*) , *Further Reconsideration*, 3 FCC Rcd 1614 (1988). Dating from the 1930s, the ISP is designed to prevent foreign monopoly telecommunications providers from "whipsawing" U.S. carriers, or playing carriers off against each other to the disadvantage of the U.S. carriers and U.S. ratepayers. *See Mackay Radio and Telegraph Company, Inc.*, 2 FCC 592 (1936), *aff'd by the Commission en banc*, 4 FCC 150 (1937), *aff'd sub nom. Mackay Radio and Telegraph Co. v. F.C.C.*, 97 F.2d 641 (D.C. Cir. 1938).

[3] We defined "simple reduction" as "a reduction involving a mathematical reduction in the accounting rate and no other change to the operating agreement between the carriers." *Phase I Report and Order*, 6 FCC Rcd at 3552 n.3.

[4] Under the option, simple accounting rate reductions are approved once a carrier files a letter providing certain information. This information includes: 1) the type of service; 2) the foreign telecommunications entity; 3) the present accounting rate; 4) the new accounting rate; 5) the effective date of the reduction; and 6) statements that the accounting rate would be divided 50-50 and that there had been no change in the operating agreement with the foreign correspondent.

[5] In particular, we decided to look favorably upon a waiver request to implement a more cost-based international accounting rate, if accompanied by a carrier commitment to lower calling prices, or if accompanied by a showing that some other public benefit would result. For instance, we noted the possibility of new or improved services, or increased competition.

[6] In 1987, we streamlined the procedure for obtaining an ISP waiver for voice services by reducing the notice period to twenty-one days. *ISP Reconsideration*, 2 FCC Rcd at 1122.

that, given the telex and packet traffic flow differential and the foreign telecommunication provider's incentive to lower the accounting rates,[7] such rates not only may already be closely aligned with costs, but may be driven below costs by foreign telecommunication providers. Sprint contends that a 60-day waiver review period for telex and packet services is necessary in order to give the Commission a longer opportunity to ensure that accounting rates serve the public interest.[8] Sprint believes that unilateral reductions in telex and packet accounting rates remove any leverage a U.S. carrier might possess to encourage agreement on IMTS reductions. Finally, Sprint argues that resort to the Commission's complaint procedures would stretch Commission and Sprint resources, whereas a 60-day review period would be more efficient.

5. AT&T opposes Sprint's petition, arguing that the Commission's concern over the net settlements deficit is based, at least in part, on the fact that accounting rates are not cost-based, and that this concern applies to telex and packet services as well as voice. AT&T also states that retaining non-streamlined Commission review over accounting rate reductions for such services gives foreign telecommunications entities a basis for arguing against bringing international voice accounting rates closer to cost. Finally, AT&T notes that Sprint may challenge any changes in telex and packet accounting rates through a complaint proceeding.

B. MCI's Petition for Reconsideration

6. MCI seeks approval of accounting rate reductions that take place at the same time, at the same accounting rate level and with the same terms for all authorized U.S. international common carriers. MCI states that as a matter of policy the Commission should approve only those waiver requests to be implemented simultaneously for all competing U.S. carriers in order to enhance competition in the U.S. and decrease the net settlements deficit by assuring that nondominant carriers also benefit from lower accounting rates. MCI further contends that as a matter of law the Commission has an obligation to provide legal reasoning, analysis and explanation as a basis for its ruling and that the Commission has not addressed MCI's argument on simultaneity.

7. MCI claims that the procedural changes adopted in the *Phase I Report and Order* send foreign telecommunications entities the message that the Commission is willing to accept non-uniform international accounting rates and thereby encourages foreign correspondents to retain higher accounting rates for some carriers. MCI claims that it has been and will be harmed by such disparity, and submits figures in support of this assertion. MCI admits that requiring simultaneity may cause a delay in accounting rate reductions, but asserts that this delay is a small price to pay for avoiding such anticompetitive activity. Finally, MCI agrees with the Commission's conclusion[9] that accounting rate reduction filings should identify all components of an accounting rate in order to prevent hidden concessions, and suggests that all carriers be required to submit a Supplemental Data Statement in order to identify such components.

8. The Competitive Telecommunications Association (Comptel) supports MCI's Petition for Reconsideration and the proposal to provide for simultaneous accounting rate reductions, in order to prevent AT&T from using accounting rates to engage in anticompetitive behavior. Sprint also supports MCI's request for simultaneity and asserts that procedural requirements adopted in the *Phase I Report and Order*, such as notarized statements of non-exclusivity and proportionate return, are insufficient to prevent whipsawing, which can occur, according to Sprint, through the use of instruments which are not covered by the Commission's policy.[10] Sprint also argues that it, like MCI, has been hurt by the non-simultaneous implementation of accounting rate changes by foreign carriers who have agreed to reductions with AT&T.

9. AT&T opposes MCI's Petition, arguing that the changes made in the *Phase I Report and Order* further the Commission's policy goals of bringing accounting rates closer to cost, promoting competition and protecting the public interest against whipsawing. AT&T states that approving only simultaneous reductions would encourage some U.S. carriers to avoid initiating negotiations for accounting rate reductions, encourage U.S. carriers to seek favor through means other than accounting rate changes, and encourage foreign telecommunication entities to use the simultaneity requirement as an excuse to avoid negotiations with one carrier. AT&T also states that, contrary to MCI's assertion, the ISP was not established as a means for the Commission to manage competition, but rather as a means to prevent whipsawing. In fact, AT&T states, the Commission has explicitly found in the case of international voice services that uniformity is not in the public interest, and that the ISP should be applied flexibly to encourage competition.

IV. DISCUSSION

10. In this Order, we deny Sprint's request to reconsider the application of the ISP notification and revised waiver mechanisms to telex and packet services and MCI's request that the Commission approve only accounting rate reductions that take place at the same time, at the same accounting rate level and with the same terms for all authorized U.S. international common carriers. In so doing, we reaffirm our commitment to lower, cost-based, accounting rates for all U.S. carriers providing international telecommunications services and our intention to ensure that competing U.S. carriers are afforded protection against discriminatory treatment in the negotiation of international accounting rates by foreign administrations.

11. In its petition, Sprint suggests that applying the expedited notification and streamlined waiver procedures to telex and packet services has exacerbated or will exacerbate the net settlements deficit and requests that we reinstate a 60-day ISP review for such services. While Sprint correctly

[7] Sprint explains that traffic for packet and telex services has an inbound-U.S. balance, and that any accounting rate reductions for these services would therefore deprive U.S. carriers providing the services of net revenues. By removing these revenues from U.S. carriers, Sprint argues, accounting rate reductions would increase the net settlements deficit.

[8] Sprint notes that it does not seek flat denial of such reductions, and that its proposal would therefore not hinder attempts to reduce IMTS accounting rates.

[9] *Phase I Report and Order*, *supra*, at 3554 n.32.

[10] Sprint cites the use of equipment purchases as one way for foreign telecommunications entities to whipsaw U.S. carriers.

notes that the U.S. net settlements deficit has grown substantially from approximately $2 billion in 1988 to an estimated $3.4 billion in 1991,[11] we also recognize that the effect of telex settlements on the U.S. net settlements deficit is minor at best. Indeed, since 1988 net settlements receipts for telex service, for example, have decreased from $3.1 million to $1.2 million in 1990, reflecting in part the service's declining demand.[12] Simply put, given the relatively large net settlements deficit, it would be inappropriate for us to justify modifying our ISP procedures based on a *de minimus* amount of settlements revenues either for a declining or for an "emerging" service.

12. Moreover, in contrast to Sprint, we are very encouraged by the effect of the Report and Order's ISP procedural changes on the U.S. settlements deficit. In fact, the best available figures suggest that the accounting rate reductions negotiated by U.S. carriers under the new rules have already saved the United States an estimated $308 million in IMTS settlements outpayments. We have seen no evidence that accounting rate reductions for telex or packet switched services would have a significant negative effect on the net settlements deficit. To the contrary, we agree with AT&T that carriers in other countries would be more willing to reduce IMTS accounting rates if telex and packet switched accounting rates are permitted to be based on the costs of providing these services.[13] Thus, although U.S. carriers may, at present, receive settlements payments for telex and packet switched service, we do not believe that Sprint is necessarily correct in its assessment that there will be a negative effect on the net settlements deficit by application of the new ISP rules to these services.

13. With regard to Sprint's concern that U.S. carriers may have to raise collection rates for telex and packet services to make up for lower accounting rate receipts, we stated in the *Phase I Report and Order* that "there may be instances in which a new, lower rate agreed to by one U.S. carrier may not sufficiently cover the costs of a competing carrier should the competing carrier seek to negotiate a similar reduction."[14] A competing carrier is not required under the ISP, however, to match an accounting rate reduction implemented by the filing carrier. Our streamlined ISP procedure simply provides a carrier that wishes to lower its accounting rate an opportunity to do so.

14. We therefore decline to reinstitute a 60-day review period for telex and packet switched waivers. The 60-day period proposed by Sprint would appear not only to unnecessarily delay the attainment of lower, more cost-based international accounting rates, but to be in direct contrast to the domestic regulatory structure that permits Sprint to operate on an unregulated basis. In the international context, our experience indicates that 21 days is a reasonable amount of time for the Commission or a U.S. carrier to challenge a waiver request that may raise complex issues concerning whipsawing. Indeed, we note that the Commission's Rules provide only 14 days for review of lengthier and more complex nondominant, and in some cases dominant, carrier international tariff submissions.[15] As in the case of tariffs, a carrier may challenge the waiver request, and thus initiate a proceeding to determine whether the changeis in the public interest.[16] Furthermore, we do not believe that Sprint has offered any compelling reason that outweighs the importance of the notification procedure in promoting our goal in this proceeding of encouraging lower, more cost-based international accounting rates.

15. We are concerned, however, by MCI's assertion that in many cases foreign administrations have refused to offer MCI the same accounting rate implemented for other carriers,[17] and its allegation that it has already sustained injury

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[11] This figure reflects overwhelmingly an increase in U.S. carrier IMTS settlement payments to foreign correspondents. For instance, of the $2,761,775,000 net settlements deficit in 1990, U.S. carrier IMTS outpayments accounted for $2,759,353,000. *See* Kenneth B. Stanley, "A Review of IMTS Accounting Rates from 1985 to 1991", February 18, 1992, Industry Analysis Division, Common Carrier Bureau; "Trends in the International Communications Industry, 1975-1990", October 4, 1991, Industry Analysis Division, Common Carrier Bureau.

[12] Telex minutes have decreased from approximately 400 million in 1988 to 57 million in 1990.

[13] We also agree with the Bureau assessment that, because of high collection rates for packet switched service in the United States, accounting rate reductions followed by reductions in the collection rate would likely spur greater U.S.-outbound volume. *See AT&T, Petition for Waiver of the International Settlements Policy for Parallel International Routes for Accounting Rates and Division of Tolls for Packet Switched Service with the United Kingdom*, 7 FCC Rcd 2580, 2582-3 (Com. Car. Bur. 1992); *AT&T, Petition for Waiver of the International Settlements Policy to Reduce the Accounting Rate for International Direct Packet Switched Service Between the United States and the Federal Republic of Germany*, 4 FCC Rcd 1195, 1196 (Com. Car. Bur. 1989), *on recon.* 4 FCC Rcd 6602 (Com. Car. Bur. 1989).

[14] *Phase I Report and Order*, 6 FCC Rcd at 3553. *See also International Competitive Carrier Policies*, 102 FCC 2d 812, 843-4 (1985). "Within the process of carrier-initiated ratemaking, carriers are given considerable flexibility to average their costs among their subscriber base." *Western Union Telegraph Company, Phase I*, Final Decision, 95 FCC 2d 881, 919 (1983).

[15] *See International Competitive Carrier Policies*, 102 FCC 2d at 844; 47 C.F.R. § 61.58 (b), (c). Even the 45 days provided for review of some dominant carrier tariff submissions is less than the 60 days proposed by Sprint.

[16] In fact, the twenty-one day review period has proved sufficient to enable a carrier to challenge a competing carrier's accounting rate change as not in the public interest. *See* USP-92-W-017, USP-92-W-031, USP-92-W-141. We note also that an ISP letter filed as a notification which the Bureau determines should have been filed as a waiver will be returned to the filing carrier without any reduction in the subsequent twenty-one day review period. 47 C.F.R. § 64.1001(i).

[17] MCI states that it has been unable to negotiate accounting rates equal to AT&T with the following administrations: Bolivia, Cable & Wireless (West Indies) (including Anguilla, Antigua, British Virgin Islands, Cayman Islands, Dominica, Grenada, Montserrat, St. Kitts, St. Lucia, St. Vincent and Turks & Caicos Islands), Columbia, Ecuador, Egypt, Fiji, Iran, Jamaica, Liberia, Peru, Phillipines, Portugal, Saudi Arabia, Senegal, Uruguay, Vietnam and Yugoslavia. *See* Ex Parte Presentation of MCI, submitted June 4, 1992. Since its presentation, MCI has negotiated accounting rates equal to AT&T with Bolivia (USP-92-W-342), Columbia (USP-92-W-217), Ecuador (USP-92-N-223), Egypt (USP-91-N-195) and Portugal (USP-92-W-341).

MCI adds that it has also sustained injury in those cases where it received an accounting rate equal to AT&T, but with a delayed effective date. *Id. See* MCI Petition, at 13. Indeed, the accounting rate reductions negotiated by MCI with Bolivia and Ecuador set effective dates twelve months and eight months, respectively, after the date to which the countries agreed with AT&T. *See* USP-92-W-342; USP-92-N-223.

due to its inability to receive reductions already available to competing U.S. carriers.[18] Moreover, we are particularly concerned with MCI's assessment that foreign administrations will conclude on the basis of the reforms introduced in the *Phase I Report and Order* that they are completely free to withhold accounting rate reductions from competing U.S. carriers, despite our clear expectation that foreign administrations would offer any reduction in accounting rates to all carriers serving the point, and our requirement that carriers not negotiate exclusive arrangements with foreign administrations.[19]

16. We believe MCI's petition highlights the fact that this Commission's commitment to our policy of nondiscriminatory treatment may not be fully appreciated. In this Order, we wish to make clear our view that discriminatorytreatment of U.S. carriers in their traffic relations with each other and with a given country is inconsistent with Commission policy and with CCITT recommendation D.140[20] which provides, *inter alia*, that each administration should apply "to all relations on a non-discriminatory basis" the principle that accounting rates for international telephone services be cost oriented and take into account relevant cost trends.[21] We believe that D.140 should strengthen the commitment of the international telecommunications community to the principle that accounting rate reductions shall be made available to all competing U.S. carriers on a nondiscriminatory basis.[22]

17. We are therefore confident that, given the recent indication of international support for nondiscriminatory accounting rates, foreign administrations will treat competing U.S. carriers in a nondiscriminatory manner. Accordingly, we do not consider it necessary at this time to adopt MCI's specific proposal that the Commission approve only accounting rate reductions that are implemented simultaneously by all competing U.S. carriers, particularly since we are concerned that MCI's proposal could have the effect of delaying accounting rate reductions, depriving U.S. carriers and consumers of the potential "savings" from such reductions. Given the magnitude of the U.S. net settlements deficit, we are wary about adopting an approach that could hamper U.S. carriers' efforts to negotiate the accounting rate reductions necessary to further constrain the deficit's growth.[23]

18. We nevertheless agree with MCI that Commission policy should be to detect and take steps to eliminate discriminatory treatment of U.S. carriers. While we are concerned that MCI's specific proposal may not be the best means of achieving our goals, we agree that, if discrimination persists despite our expectations to the contrary, U.S. carriers may need some protection from discrimination by foreign administrations. Initially, to ensure that foreign administrations are aware of our policy against discrimination, we change our Rules to require a U.S. carrier submitting an ISP waiver or notification to certify that it made clear to the foreign administration that FCC policy requires that competing U.S. carriers have access to accounting rates negotiated by theU.S. carrier with a particular foreign administration on a nondiscriminatory basis.[24] In addition, if we determine after reviewing a U.S. carrier's allegations that the U.S. carrier has tried and failed to obtain a nondiscriminatory accounting rate with a particular administration with which a different U.S. carrier has implemented a reduced accounting rate, we will contact the foreign administration to reemphasize U.S. policy regarding nondiscrimination and urge compliance.[25] In the event that discrimination continues, we have the authority under the Communications Act to "require that carriers cease and desist from charging, collecting and receiving, or participating in charges above a maximum rate, even though a portion of that service is rendered outside the United States."[26] Thus, should discrimination continue, a carrier could propose that the Commission adopt a procedure for identifying those instances in which a foreign carrier continues to discriminate among competing U.S. carriers,[27] which could ultimately result in our initiating a rulemaking to establish the accounting rate for that service with that country. We would also consider other procedural mechanisms within the scope of our authority which are designed to ensure nondiscriminatory accounting rates, to the extent these approaches furthered the goals of this proceeding.

19. We also agree with MCI that the collection of information identifying all components of an accounting rate is necessary in order to identify arrangements that might discriminate against a U.S. carrier and hinder the reduction of accounting rates towards cost. We believe that the Rules, as stated, are clear that carriers should identify all aspects of an accounting rate in an ISP letter, including all information necessary to identify instances of whipsawing.[28]

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[18] MCI states that as of September 1991 it had sustained $8 million in harm due to delays in accounting rate reductions and its inability to obtain, or obtain simultaneously, growth-based accounting rate schemes.

[19] MCI Petition, at 12.

[20] Recommendation D.140 was approved by the CCITT on October 1, 1992, by a greater than eighty percent margin.

[21] *See* Recommendation D.140.

[22] *Phase I Report and Order*, 6 FCC Rcd at 3554. Our records of ISP filings indicate that U.S. carriers, for the most part, have been able to obtain accounting rate reductions and effective dates equivalent to AT&T's.

[23] Two of MCI's recent alternative proposals for Commission action before approval of ISP filings -- *i.e.*, public notification of accounting rate negotiations and a 90-day implementation delay -- would pose similar problems. *See* MCI, Ex Parte Submission, September 18, 1992, at 5, 6. Indeed, MCI's second proposal appears designed to lengthen the review period for ISP waivers, thus substantially undermining the ISP reforms introduced by the Commission to streamline the ISP process. *See ISP Reconsideration*, 2 FCC Rcd at 1122, 1123. *See also supra* note 17.

[24] *See* Appendix A. We will, of course, continue to require U.S. carriers to submit sworn statements regarding non-exclusive availability of the accounting rate and proportionate share of return traffic. *See* 47 C.F.R. § 64.1001 (g).

[25] *See* MCI, Ex Parte Submission, September 18, 1992, at 7.

[26] *See Regulation of International Accounting Rates, Further Notice of Proposed Rulemaking*, 6 FCC Rcd 3434, 3436 (1991) (footnotes omitted). We further stated that we are most likely to exercise this authority where a foreign administration maintains a large dissymetry in calling prices with the United States, where a foreign administration maintains accounting rates with the U.S. that ignore relevant cost trends, or where a foreign administration seeks to evade the ISP. *Id.* at 3434.

[27] *See Regulation of International Accounting Rates, Phase II*, Further Notice of Proposed Rulemaking, 6 FCC Rcd 3434 (1991); NPRM, 5 FCC Rcd at 4951.

[28] Waivers and notifications must contain the following in-

Such information would include, for example, accounting rates for given levels of traffic, geographical areas, time periods, classes of service or users, or any other present or future distinctions on which accounting rates may be based. While we therefore decline to adopt MCI's proposal to require a Supplemental Data Statement, we wish to clarify that all carriers, whether dominant or nondominant, are required to file with the Commission within 30 days of execution a copy of their operating agreements (and amendments thereto) with foreign correspondents, with respect to the interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, or the basis of settlement of traffic balances.[29]

IV. CONCLUSION

20. This Order addresses two challenges to our streamlined ISP notification and waiver procedures. We reaffirm our determination that our goal of lower, more cost-based accounting rates and a reduction in the net settlements deficit mandates that we streamline the ISP process for all services. We accordingly deny Sprint's petition for reconsideration asking us to modify the notification option and 21-day waiver review period for telex and packet switched services. We share MCI's concern over the continued discriminatory treatment of U.S. carriers by foreign administrations, contrary to U.S. policy and CCITT Recommendation D.140. Nevertheless, we deny MCI's petition for reconsideration to the extent it contends that the Commission should approve only reductions that are implemented simultaneously for all competing U.S. carriers, because we believe MCI's proposed solution would hinder our policy of encouraging lower, more cost-based international accounting rates. We note, however, that we would be willing to explore other options which not only further our goal of preventing discrimination that could adversely affect competition in the international marketplace, but which also ensure that U.S. carriers and consumers gain the maximum possible savings from accounting rate reductions.

V. ORDERING CLAUSES

21. Accordingly, IT IS HEREBY ORDERED that the petitions for reconsideration filed by Sprint and MCI ARE DENIED.

22. IT IS FURTHER ORDERED that pursuant to authority contained in Sections 1, 4, 201-205, 211, 215, 218-220, 303 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154, 201-205, 211, 215, 218-220, 303 and 405, Part 64 of the Commission's Rules, 47 C.F.R. Part 64, IS AMENDED as set forth in Appendix A below.

23. IT IS FURTHER ORDERED that this *Order on Reconsideration* and the amendment to the rules set forth in Appendix A SHALL BECOME EFFECTIVE ninety days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 225 unless otherwise noted.

2. Paragraph (g) of Section 64.1001 is amended to read as follows:

§ 64.1001 International settlements policy and waivers.

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formation: the applicable international service, the present and new accounting rates (including any surcharges), the division of tolls, the foreign correspondent, the effective date and an explanation of any changes in the operating agreement with the foreign correspondent (for waivers) or a statement that there has been no other modification in the operating agreement with the foreign correspondent regarding the exchange of services, interchange or routing of traffic and matters'concerning rates, accounting rates, division of tolls, or the basis of settlement of traffic balances. 47 C.F.R. § 64.1001 (e), (f). Waivers or notifications must be filed 1) for any new operating agreement, if the terms and conditions of the agreement are not identical to those of other carriers providing similar service between the two countries; or 2) for an amendment to an existing operating agreement under which a carrier already provides the service between the two countries, if other carriers provide the same or similar service between the two points. Waivers or notifications are required if the new agreement or the amendment relates to the exchange of service, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, or the basis of settlement of traffic balances. *See* 47 C.F.R. § 43.51 (d).

[29] 47 C.F.R. § 43.51 (a); 47 U.S.C. § 211. "Our intent in revising Section 43.51 was to eliminate the filing requirements for forborne non-dominant carriers in order to limit the routine filing of contracts that are not useful to us in the performance of our monitoring duties...We therefore revise Section 43.51 to clarify that only non-dominant carriers treated with forbearance are not required to file contracts." *Amendment of Sections 43.51, 43.52, 43.53, 43.54 and 43.74 of the Commission's Rules to Eliminating Certain Reporting Requirements*, 1 FCC Rcd 933, 934 (1986). No U.S. carrier is treated with forbearance with regard to its international traffic.

* * * * *

(g)Notification letters and waiver requests must contain notarized statements that the filing carrier:

(1) Has not bargained for, nor has knowledge of, exclusive availability of the new accounting rate;

(2) Has not bargained for, nor has any indication that it will receive, more than its proportionate share of return traffic; and

(3) Has informed the foreign administration that U.S. policy requires that competing U.S. carriers have access to accounting rates negotiated by the filing carrier with the foreign administration on a nondiscriminatory basis.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-259

In the Matter of

Implementation of the Cable Television Consumer Protection and Competition Act of 1992

Broadcast Signal Carriage Issues

NOTICE OF PROPOSED RULE MAKING

Adopted: November 5, 1992; Released: November 19, 1992

Comment date: January 4, 1993
Reply comment date: January 19, 1993

By the Commission: Commissioner Quello issuing a statement.

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I. INTRODUCTION

1. On October 5, 1992, the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992" or "1992 Act") was enacted.[1] By this *Notice of Proposed Rule Making* ("*Notice*"), we seek comment on the adoption of implementing regulations relating to mandatory television broadcast signal carriage and retransmission consents.

II. BACKGROUND

2. The Cable Act of 1992 contains two provisions that fundamentally alter the relationship that has existed in recent years between cable television systems (and other "multichannel video programming distributors") and the broadcast stations whose signals they distribute to their subscribers. The first of these provisions addresses the rights of "local" commercial and noncommercial television broadcasters to carriage on cable television systems on a mandatory basis. The second provision, in certain defined circumstances, prohibits cable operators and other multichannel video programming distributors from carrying the signals of television stations without first obtaining their consent. The mandatory carriage provisions essentially restore a type of obligation that was included in the Commission's rules from 1965 until 1985.[2] The retransmission consent provisions apply to cable operators and other multichannel video programming distributors, and they are similar to requirements that have applied to the transmission by one broadcaster of the signal of another broadcaster since the Communications Act was adopted in 1934. The two provisions are related in that, with respect to local cable carriage, broadcasters on a system-by-system basis must make a choice once every three years whether to proceed under the mandatory carriage rules or whether their relationship with system operators will be governed by the retransmission consent requirement. Although the provisions are related by virtue of that option, they are otherwise substantively quite distinct, with each provision functioning in a separate fashion once a selection is made. Thus, the inclusion of both issues in a single proceeding is simply a matter of administrative convenience and not an indication that the matters are not severable.

3. Specifically at issue in this proceeding are Section 4 of the Cable Act of 1992, which contains the mandatory signal carriage provisions for commercial stations, Section 5, which contains analogous rules for noncommercial stations, and Section 6, which contains the retransmission consent provisions. The noncommercial carriage provisions contain no specific effective date and thus, under the structure of the 1992 Act, become effective on December 4, 1992 (60 days after enactment). The Commission is directed to issue rules implementing the commercial station

[1] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 102 Stat. (1992).

[2] The Commission's must-carry rules were invalidated by the U.S. Court of Appeals for the District of Columbia Circuit in *Quincy Cable TV, Inc. v. FCC* (*Quincy*), 768 F. 2d 1434 (D.C. Cir. 1985), *cert. denied*, 476 U.S. 1169 (1986). *See also Century Communications Corp. v. FCC*, 835 F. 2d 292 (D.C. Cir. 1987), *clarified*, 837 F. 2d 517, *cert. denied*, 4863 U.S. 1032 (1988) (invalidating a subsequent set of must-carry rules). We note that the pending *Second Further Notice of Proposed Rule Making* in MM Docket No. 90-4 sought comment on the adoption of must-carry requirements in conjunction with the Commission's effective competition standard. *See* 6 FCC Rcd 4545 (1991). In light of the mandatory carriage requirements of the 1992 Act, we terminate that proceeding.

carriage provisions and to complete its rulemaking on rules governing the exercise of retransmission consent rights within 180 days.[3]

4. The legislative history of the 1992 Act contains an extensive discussion of the rationale and legal analysis of these must-carry and retransmission consent provisions.[4] We will not repeat Congress' findings here. To provide the context for this proceeding, however, we note that the 1992 Act and its legislative history evidence Congress' conclusion that there is a substantial governmental interest in ensuring that cable subscribers have access to local commercial and noncommercial broadcast stations. Further, the 1992 Act and its legislative history indicate that Congress has determined that the must-carry and channel positioning provisions of the 1992 Act are needed to protect the system of free, over-the-air television broadcasting and to promote competition in local markets. Specifically, Congress has concluded that such regulation is needed to ensure a competitive balance between cable systems and broadcast stations. With respect to retransmission consents, Congress has concluded that a substantial portion of the fees subscribers pay to cable systems is attributable to the value subscribers place on viewing broadcast signals. Prior to the 1992 Act, however, cable operators have not been required to seek the permission of the originating broadcaster before carrying its signal, nor have they been required to compensate the broadcaster for the value of its signal. To remedy this situation, Congress included in the 1992 Act a provision permitting broadcasters to seek compensation from cable operators and other multichannel providers for carriage of their broadcast signals.

5. In this proceeding, we seek comment on how the must-carry and retransmission consent provisions of the Cable Act of 1992 should be incorporated into the Commission's rules.

III. MUST-CARRY REGULATIONS

A. Carriage of Local Noncommercial Educational Television Stations

6. The 1992 Act does not specifically direct the Commission to adopt rules to effectuate the new statutory must-carry requirements for noncommercial educational (NCE) television stations, nor does it set a separate effective date for this section. Thus, these statutory requirements for NCE stations become effective on December 4, 1992, the effective date for provisions of the Cable Act of 1992 unless otherwise specified.[5] Because we intend to codify these statutory must-carry provisions into the Commission's rules, however, we seek comment regarding any clarifications to these requirements that may be warranted.

7. *Definition of Qualified Local NCE Station.* Section 615 provides that certain NCE television stations are entitled to must-carry privileges on cable systems in or near their service area. Pursuant to Section 615(l)(1), an NCE station will qualify for must-carry rights if it is licensed by the Commission as an NCE station and if it is owned and operated by a public agency, nonprofit foundation, corporation or association, and if that licensee is eligible to receive a community service grant from the Corporation for Public Broadcasting.[6] In the alternative, an NCE station will be considered qualified if it is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes. Specifically included in the definition are translators of any NCE television station with five watts or higher power serving the franchise area, full-service stations or translators licensed to channels reserved for noncommercial educational use pursuant to Section 73.606 of the Commission's rules, and any such stations and translators operating on channels not so reserved that the Commission determines are qualified as NCE stations. Section 615(l)(2) defines a qualified local NCE station as a qualified NCE station licensed to a principal community whose reference point, as defined in Section 76.53 of the Commission's rules, is within 50 miles of the principal headend of the cable system, or whose Grade B service contour, as defined in Section 73.683(a) of the Commission's rules encompasses the principal headend of the cable system.

8. We seek comment on various aspects of this definition. First, with respect to municipal NCE stations, what criteria should be used to determine whether such a station "transmits predominantly noncommercial programs for educational purposes" pursuant to the 1992 Act? We propose to consider a municipal NCE station eligible to invoke the must-carry rules if it transmits noncommercial educational programming for at least 50 percent of its

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[3] Section 4, in addition, provides that no cable operator shall be required to provide or make available any "input selector switch as defined in section 76.5(mm)" of the Commission's rules or provide information to subscribers regarding such a switch. The Commission is provided no discretion in this regard. Accordingly, as of December 4, 1992, the effective date of the Cable Act, we will regard the existing requirements obliging system operators to provide input selector switches and information about their availability to be of no further force or effect and the rule in question (47 C.F.R. § 76.66) will be deleted as part of this proceeding. Cable operators are reminded, however, that they must continue to be concerned with the potential for interference related to input selector switches that are provided on a voluntary basis or are connected by subscribers on their own.

[4] *See* House Committee on Energy and Commerce, H.R. Rep. No. 628 ("House Report"), 102d Cong., 2d Sess. (1992); Senate Committee on Commerce, Science, and Transportation, S. Rep. No. 92 ("Senate Report"), 102d Cong., 1st Sess. (1991); House Committee on Energy and Commerce, H.R. Rep. No. 862 ("Conference Report"), 102d Cong., 2d Sess. (1992), reprinted at Cong. Rec. H 8308 (Sept. 14, 1992).

[5] The carriage obligations imposed generally do not conflict with existing rule requirements. There is one area, however, where the statute, on its effective date, necessarily alters an existing rule. Section 615(f) provides that a qualified local noncommercial educational television station whose signal is carried by a cable system "shall not assert any network nonduplication rights it may have pursuant to section 76.92 ... to require the deletion of programs aired on other qualified local noncommercial educational television stations whose signals are carried by that operator." Consequently, as of December 4, 1992, the nonduplication rights of noncommercial educational television stations set forth in Section 76.92 of the Commission's rules will be subject to the limits set forth in the statute. Thus, as between *qualified local* noncommercial educational television stations, no network nonduplication requirements will be enforced. The specific rules in question will be revised accordingly in the course of this proceeding.

[6] *See* 47 U.S.C. § 396(k)(6)(B).

broadcast week. Another alternative would be to specify a minimum number of hours per week that must be devoted to educational programming to qualify for must-carry status. We further propose to define "educational purposes" pursuant to Section 73.621(a) of the Commission's rules.[7] We also seek comment on when, if ever, we should grant NCE status to stations or translators operating on channels other than those reserved for noncommercial educational use. We further note that the term "principal headend" is not defined in the 1992 Act but is a key element for determining when a qualified NCE station is "local." We propose, for purposes of the must-carry rules, to require a cable operator with multiple headend facilities to initially choose its principal headend, as long as the choice is not intended to circumvent must-carry obligations.[8] What procedures should be established regarding a cable operator's obligation to select a principal headend and to inform the Commission of that choice? Should the cable operator's selection be effective indefinitely? Under what circumstances should a cable operator be permitted to change its principal headend? Is there a need to include any additional reference points in Section 76.53?

9. *Signal Carriage Obligations.* Section 615(b) sets forth the general requirement that cable operators carry all qualified local NCE signals requesting carriage. The 1992 Act makes exceptions for small and medium-sized systems. Specifically, systems with 12 or fewer usable activated channels [9] must carry the signal of one qualified local NCE television station. If such a system operates beyond the presence of a qualified local NCE television station, that system shall import and carry a qualified NCE station. If no channel capacity is available to comply with these carriage requirements, such operators will not be required to remove any programming service provided to subscribers as of March 29, 1990, but must use the first channel that subsequently becomes available.

10. Systems with 13 to 36 usable activated channels must carry the signal of all local NCE stations up to a total of three local NCE stations. If such a system operates beyond the presence of a qualified local NCE television station, the cable operator shall import and carry at least one qualified NCE station. Further, if an operator of a system with 13 through 36 channels carries the signal of a qualified local NCE station that is affiliated with a state public television network, that operator shall not be required to carry the signal of any additional local NCE stations affiliated with the same network, if the programming of the additional stations is substantially duplicated by the programming of the local NCE station being carried.

11. Systems with a capacity of more than 36 usable activated channels are generally required to carry the signals of all qualified local NCE stations requesting carriage.[10] Depending on the characteristics of the area in which the system is located, this rule could require carriage of many NCE stations. The 1992 Act, however, makes an exception for these large systems with respect to NCE stations that air duplicative programming. The 1992 Act provides that those systems required to carry at least three qualified local NCE stations shall not be required to carry the signals of additional local NCE stations if the programming of those additional stations substantially duplicates the programming broadcast by a qualified local NCE station requesting carriage. The 1992 Act directs the Commission to define "substantial duplication" in a manner that promotes access to distinctive NCE television services.

12. We seek comment on implementation of these statutory provisions. We propose that if a small or medium-sized cable system receives multiple requests for carriage, it should have discretion to select the station(s) it will carry, subject to the requirements of Section 615(c), discussed below, regarding continued carriage of existing stations.[11] We also seek comment on how we should determine if programming is "substantially duplicated," both for purposes of the medium-sized system exception regarding state networks and the large-sized system exception. Should the definition be the same for both purposes? We propose that a station will be deemed to "substantially duplicate" the programming of another station if more than 50 percent of its weekly prime time programming consists of programming aired on the other station. This alternative is based on the existing definition of "unduplicated broadcast television signal" in Section 76.33(a)(2) of the Commission's rules. Other options include adopting a definition based on all day programming schedules, similar to the one we propose to use to determine whether a municipally-owned NCE station transmits sufficient educational programming to qualify for must-carry status. Furthermore, the definition could use a percentage other than 50 percent of a station's programming week as a cut-off for such determinations. We seek comment on these and other alternatives.

13. In addition, Section 615(c) of the 1992 Act requires that all cable operators continue to provide carriage to all qualified local NCE television stations whose signals were carried on their systems as of March 29, 1990. The requirements of this subsection may be waived upon written consent of the cable operator and the station. Section 615(h) provides that qualified NCE signals shall be available to every subscriber as part of the cable system's lowest priced service tier that includes the retransmission of local commercial television broadcast signals. Under Section 615(d), a cable operator required to add the signals of qualified local NCE stations to its system may do so by placing such additional stations on PEG channels not in use for their designated purposes, subject to approval by the franchising

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[7] 47 C.F.R. § 73.621(a). This section sets forth the eligibility requirements for licensees of noncommercial educational television stations.

[8] We note that in the *Report and Order* in MM Docket No. 85-349, 1 FCC Rcd 864, 887 (1986) (the post-*Quincy* must-carry rules), the Commission similarly permitted cable operators with multiple headend facilities to choose their own principal headends.

[9] Section 2(c)(5) of the 1992 Act defines "activated channels" as "those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use." In addition, Section 2(c)(7) defines "usable activated channels" as "activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as defined by the Commission." We propose to add these definitions to Section 76.5 of the Commission's rules.

[10] In addition, Section 615(b)(3)(ii)(D) of the Act provides that a system with 36 or fewer usable activated channels that increases its channel capacity to more than 36 channels must then carry each qualified local NCE station requesting carriage.

[11] This appears consistent with Congressional intent. Senate Report at 88.

authority. Further, Section 615(f) provides that a qualified local NCE station whose signal is carried by a cable operator shall not assert any network nonduplication rights it may have pursuant to Section 76.92 of the Commission's rules against another qualified local NCE station carried on the system. Finally, Section 615(k) requires a cable operator, upon request by any person, to identify the NCE signals carried on its system in fulfillment of must-carry requirements.

14. We seek comment on these requirements. The 1992 Act provides that a cable operator may place additional required NCE stations on unused public, educational or governmental (PEG) channels. Pursuant to the Communications Act, the franchising authority determines how much of a cable operator's channel capacity, if any, will be set aside for PEG use.)[12] If a channel reserved for PEG programming is used to carry an NCE signal when no other channel capacity exists and a qualified PEG user later materializes, what procedures should be followed? In addition, the 1992 Act does not specify any procedures for a cable operator's response to a request to identify channels carried pursuant to must-carry requirements. We seek comment on whether a cable operator should be required to provide this information in writing, if so requested. We also ask commenters to consider whether it would be appropriate to require a response within a specified time period. Furthermore, we seek comment on whether we should require a cable operator to keep a list of the must-carry signals in its public file.

B. Carriage of Local Commercial Television Stations

15. *Signal Carriage Obligations.* Section 614(a) states that each cable operator shall carry local commercial television stations and qualified low power stations.[13] Section 614(b) specifies the number of must-carry signals that each cable operator must provide. The operator of a cable system with 12 or fewer usable activated channels shall carry the signals of at least three local commercial television stations. However, such cable systems that serve 300 or fewer subscribers are not subject to any must-carry requirements as long as they do not delete from carriage any signal of a broadcast television station.[14] We expressly request comment on the appropriate interpretation of this exemption. A cable system with more than 12 usable activated channels is required to carry the signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels of such system.[15] Beyond these must-carry requirements, the carriage of additional broadcast television signals is at the discretion of the cable operator, subject to retransmission consent, as discussed below in Section IV, and certain statutory exceptions relating to low power stations and network affiliates also discussed below. We request comment on the implementation and enforcement of these requirements.

16. Under Section 614(b)(7), every subscriber of a cable system must receive all signals that are carried to fulfill these must-carry obligations. The must-carry signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection. If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box. In such cases, the cable operator shall offer to sell or lease a converter box to such subscribers at rates in accordance with the standards established by the Commission for equipment needed to receive basic cable service pursuant to Section 623(b)(3). We seek comment on the implementation of this provision, especially with respect to the notification requirements concerning those broadcast stations that cannot be viewed without a converter. In addition, upon request by any person, cable operators are required to identify those signals it carries to comply with the must-carry requirements, according to Section 614(b)(8). As discussed above regarding the similar requirement for NCE must-carry signals, we seek comment on implementing this requirement.

17. *Definition of a Local Commercial Station.* Section 614(h)(1)(A) defines a local commercial television station as any full power commercial television broadcast station licensed by the Commission that is located in the same television market as the cable system. For this purpose, the term local commercial television station does not include: (1) low power television stations, television translator stations, or passive repeaters; (2) a television broadcast station that would be considered a distant signal under Section 111 of the Copyright Act,[16] if such station does not agree to indemnify the cable operator for any increased copyright liability resulting from carriage on the cable system; or (3) a television broadcast station that does not deliver to the principal headend of a cable system either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment, if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.[17] We propose to add this definition as written to our rules and request comment on this proposal. We also seek comment on the basis for determining the location of the cable system for application of these must-carry provisions. Should it be based on the location of the principal headend? Should the entire geographic area served by the system be considered? Moreover, we ask commenters to consider situations where a cable system is located in more than one market. In this regard, we are concerned with potentially inconsistent carriage obligations being applicable to a single technically integrated system. With respect to the requirement that signals be available at the cable operator's signal processing equipment at specified signal strength levels, we seek comment on what, if any, definitions need to be included regarding how the

[12] 47 U.S.C. § 531.)

[13] The definition of a qualified low power television station and the must-carry rights of such signals are discussed separately below.

[14] Section 614(b)(1)(A).

[15] Section 614(b)(1)(B).

[16] 17 U.S.C. § 111. Generally stated, a distant signal under that provision is a broadcast station that could not insist upon cable carriage under the Commission's must-carry rules in effect on April 15, 1976.

[17] Section 614(h)(1)(B).

applicable strengths should be measured. Is it sufficient to simply require that good engineering practices be employed in the associated signal reception process?[18]

18. *Definition of a Television Market.* Section 614(h)(1)(C) specifies that a broadcasting station's market shall be determined in the manner provided in Section 73.3555(d)(3)(i) of the rules, as in effect on May 1, 1991, although the Commission may make modifications it deems necessary.[19] Section 73.3555(d)(3)(i) refers to Arbitron's Area of Dominant Influence (ADI) market definition in applying "national audience reach" under the multiple ownership rules. The ADI, as defined by Arbitron, is a geographic survey area based on measurable patterns of television viewing. Each county in the contiguous United States is assigned exclusively to one ADI. The assignment of a county to an ADI is based on the shares of the county's total estimated television viewing hours. The market whose home stations achieve the largest total share (percentage) of viewing is determined to be the "dominant influence" in that county, and that county is assigned to that market's ADI. Some ADIs are as small as one county; others include many counties encompassing a very large geographic area.[20] To some extent, ADIs change from year to year. How should we accommodate these sporadic changes? Moreover, Arbitron only creates ADIs for counties located in the continental U.S. What should be the market for other areas? In addition, how do we accommodate technically integrated cable systems that serve communities located in more than one county where such counties are assigned to different ADIs by Arbitron?

19. To better reflect market realities and effectuate the purposes of this Act, Section 614 (h) (1) (C) permits the Commission to add communities to or subtract communities from a station's television market following a written request.[21] Furthermore, the Commission may determine that particular communities are part of more than one television market. The 1992 Act does not specify whether such requests are to be made by the broadcast station or cable operator. We ask for comment on a proposal to permit either party to make the request. We also seek comment on the appropriate procedures for the written request for communities to be added to or subtracted from the designated market. We believe that it would be preferable to require parties requesting such determinations to file under the provisions of Section 76.7, procedures for petitions for special relief, rather than the rulemaking procedures set forth in Part 1, Subpart C. We believe that consideration of such requests could be expedited if they were filed as petitions for special relief. Would this process be adequate to afford all interested parties sufficient notice? We request comment on this proposal.

20. The 1992 Act specifies that, when considering such requests, the Commission shall afford particular attention to the value of localism by taking into account such factors as 1) whether the station, or similarly situated stations, have been historically carried on the cable system or systems within such community; 2) whether the station provides coverage or other local service to the community; 3) whether any other station qualified for carriage provides coverage of news or programming of local interest; and 4) the local viewing patterns in both cable and noncable homes in the community. We ask parties to consider whether more specific or additional criteria are needed to implement this provision. In particular, we note that under the 1992 Act's definition of "market" the pool of eligible must-carry stations, in some cases, includes stations located hundreds of miles away from the cable system. Should we consider a specific mileage limit (*e.g.* 50, 70 or 100 miles) when determining whether a station's market should be modified for must-carry purposes? Should such criteria include a standard relating to a station's over-the-air viewability?[22]

21. Section 614(f) requires the Commission to make revisions needed to update Section 76.51 of the existing rules, as part of the implementation of these must-carry provisions.[23] Section 76.51 is a list of the largest 100 television markets and their designated communities derived largely from Arbitron's 1970 prime time household rankings. It is used to identify hyphenated markets and the communities included in those markets. Since Congress specifically directed the Commission to use current ADI markets, pursuant to Section 73.3555(d) (3) (i), for determining must-carry rights, it appears that this action would primarily affect copyright liability under the compulsory license.[24] We note that the existing copyright laws require cable operators to pay royalty fees for the carriage of

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[18] It should be noted that the minimum signal level provisions of the 1992 Act largely parallel a provision formerly in the Commission's rules. *See Report and Order* in MM Docket No. 85-349, *supra*, at 888.

[19] 47 C.F.R. § 73.3555(d)(3)(i). We note that in the *Memorandum Opinion and Order and Further Notice of Proposed Rule Making* in MM Docket No. 91-140, 7 FCC Rcd 6387 (1992), the designation of this rule was changed to (e)(3)(i).

[20] In many cases the size of the ADI is determined by cable carriage of signals in distant counties. For example, the Salt Lake City ADI encompasses the entire state of Utah and portions of Colorado, Idaho, Nevada, and Wyoming -- an area of over 130,000 square miles. Salt Lake City stations collectively garner the largest share of television viewing in those areas and are, therefore, the "dominant influence" by virtue of their cable carriage.

[21] We note that Section 614 (h) (1) (C) (iv) mandates that the Commission provide for expedited consideration of such requests. We request comment on the procedures we might adopt to accomplish this goal. We further observe that Section 614 (h) (1) (C) (iii) prohibits cable operators from dropping any commercial station pending disposition of requests filed pursuant to this section. We seek comment on this requirement of the must-carry provisions.

[22] Historically, signals declared significantly viewed pursuant to Section 76.54 of the Commission's rules have been granted must-carry status. Under the 1992 Act, such signals may not necessarily have must-carry status, although significantly viewed signals continue to be relevant for copyright purposes. However, Section 614 (h) (1) (C) instructs the Commission to consider local television viewing patterns when determining the market for must-carry purposes. Since significantly viewed signals attain a "significant" level of viewing within a specified area, should this criterion be used in our determinations?

[23] 47 C.F.R. § 76.51. The purpose of this requirement is unclear since Congress specifically directed us to use current ADI markets, pursuant to Section 73.3555(d) (3) (i), for determining must-carry rights.

[24] It is our understanding that if we modify this list, the Copyright Office would use the revised list for determining copyright liability. *See Policy Decision Concerning Federal Communications Commission Action Amending List of Major Televi-*

distant signals. For copyright purposes, local signals not subject to copyright payments are determined by definitions based on the Commission's former must-carry rules. Under those rules, any signal licensed to a designated community of a hyphenated market had carriage rights within the specified (35 mile) zone of all named communities of such a market. We also currently use these market designations for the territorial exclusivity, syndicated exclusivity and network nonduplication rules.[25]

22. We note that many new television stations have commenced operation since the list was incorporated into the Commission's rules. Many television markets have grown while others have stagnated due to population shifts. The current Arbitron list of ADI television markets is, therefore, somewhat different from the 1970 list.[26] We request specific comment onwhat modifications to the list of television markets specified in Section 76.51 of our rules are needed to ensure that it reflects current market realities. In particular, we seek commenter guidance regarding the use of Arbitron's list of market designations.[27] We note that Arbitron issues its list annually to reflect changes in population and viewing patterns. The annual Arbitron list provides all ADI market designations, not just the top 100. Should we expand our list to include all markets? Should we provide for an annual update of the top 100 markets? Should we establish procedures to amend the list periodically (*e.g.*, every 3 years)?[28] Alternatively, should we modify individual market designations in response to individual rulemaking petitions?

23. In considering changes to market designations, either for must-carry purposes or for the revision of the list of markets in Section 76.51, we believe that it is important for commenters to consider the potential effects of any modifications to current market designations on other existing rules. Conflicts are likely to occur since these market designations cover different geographic areas. In particular, we are concerned about the situation where a station is entitled to must-carry status on the basis of its ADI at the same time that another station can request deletion of some portion of its programming because the applicable exclusivity and nonduplication rules use the Section 76.51 market list. We seek comment on conforming these rules. What changes are needed to avoid local broadcast station signals simultaneously beingsubject to mandatory carriage under the new statutory provisions and subject to deletion, in part, under the Commission's network nonduplication and syndicated exclusivity rules?

24. *Selection of Signals.* The 1992 Act gives the cable operator discretion in selecting the local commercial television stations that shall be carried to fulfill its must-carry requirements in situations where the number of qualified stations exceeds the number of signals a cable system is required to carry. Under Section 614(b) (2), however, two conditions limit the selection of the signals to be carried. A cable operator is not permitted to carry a qualified low power station in lieu of a local commercial television station. Moreover, if the cable operator elects to carry an affiliate of a broadcast network, the cable operator shall carry the affiliate of such broadcast network whose city of license reference point is closest to the principal headend of the cable system.[29]

25. In addition, under Section 614(b)(5), a cable operator is not required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network. If a cable operator elects to carry on its cable system a signal that substantially duplicates the signal of another local commercial television station carried on the cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network, all such signals shall be counted towards fulfillment of its signal carriage obligations. This provision is intended to preserve the cable operator's discretion while ensuring that the public has access to diverse local signals.[30]

26. The 1992 Act requires the Commission to define the term "network"[31] for purposes of applying the must-carry provisions in situations where the programming schedules

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sion Markets, 52 FR 28362 (Copyright Office, July 29, 1987). To what extent, if any, should we consider the possible copyright implications of any changes we make?

[25] *See* 47 C.F.R. §§ 73.658(m) (territorial exclusivity); 76.92-97 (network nonduplication); 76.151-163 (syndicated exclusivity).

[26] A comparison of the list of markets in Section 76.51 with Arbitron's current top 100 ADI market list indicates that 14 markets in the original list are no longer ranked in the top 100 markets. *See* Arbitron's *1991-1992 Television ADI Market Guide*. Of the markets that appear on both lists, the designated communities of 23 markets differ between the two lists. In addition, there are 19 cases where the market names differ with our list, including communities in hyphenated markets not included by the recent Arbitron list. We also wish to point out that our original list was not identical to Arbitron's ADI list at the time. For example, our market list in Section 76.51 uses New York-Paterson-Linden-Newark instead of the designation New York, as Arbitron did in 1970. Further, while Arbitron continues to designate the top ranked market New York, it lists stations licensed to each of the following communities within that market: New York, New York; Bridgeport, Connecticut; Newark, New Jersey; Patchogue-Hempstead, New York; Riverhead, New York; Garden City, New York; Montclair, New Jersey; Linden-Newark, New Jersey; Poughkeepsie, New York; Secaucus, New Jersey; and Paterson, New Jersey.

[27] The proceeding we are commencing here, insofar as it addresses revisions to Section 76.51, necessarily overlaps to some extent with the ongoing proceeding in Docket 87-24. *See Further Notice of Proposed Rule Making*, Gen. Docket 87-24, 3 FCC Rcd 6171 (1988). That proceeding addresses, *inter alia*, the makeup of the Section 76.51 market list to the extent it provides the reference for: 1) cable television network nonduplication rules; 2) cable television syndicated exclusivity rules; and 3) broadcast station territorial exclusivity rules. In order to facilitate coordination of the overlapping aspects of these two proceedings, we will reopen Docket 87-24 for further comments and reply comments on the same schedule as is used herein. Further, in light of the mandate set forth in Section 614(f) of the Cable Act of 1992, we may in the interim consider *ad hoc* revisions to the list through individual rulemaking notices. *See, e.g., Press Television Corporation*, FCC 92-460 (adopted Oct. 1, 1992) (structure of market to be reviewed in separate proceeding).

[28] We note that the Commission updates its list of top 50 markets for purposes of the prime time access rule every three years. *See* 47 C.F.R. § 73.658(k).

[29] The 1992 Act states that the closest station is determined by comparing the location of the principal headend to the city of license as defined in Section 76.53 of our rules, 47 C.F.R. § 76.53, as of January 1, 1991, or any successor regulation.

[30] Senate Report at 85.

[31] This requirement is set forth in Section 614 (b) (2) (B) and noted in Section 614 (b) (5).

of two or more stations are similar. While Section 614 (b) (2) and one part of Section 614 (b) (5) address duplicating network affiliates, a second part of Section 614 (b) (5) addresses any duplicating local commercial signal and seems to have the same intent. Thus, we believe that it would be appropriate to fashion a definition of network that incorporates the substantial duplication concept. This could be accomplished by borrowing from one of the established network definitions or by fashioning a new definition based entirely on the amount of duplicative programming involved rather than on the source of that programming.[32] We request comment on how a network affiliate should be defined for purposes of these provisions and on what objectives we should seek to accomplish by that definition. In particular, parties are asked to suggest the relevant comparisons of the schedules of stations for determining whether their programming is sufficiently duplicative. Should the comparisons be based on programming throughout the day or only selected dayparts, such as prime time? What cut-off should we choose for these determinations (*e.g.*, more than 50 percent)?[33] Moreover, should we use the same standard as that proposed for NCE stations regarding substantial duplication?

27. *Low Power Television Stations.* Section 614(a) requires cable operators to carry the signals of qualified low power television (LPTV) stations under certain circumstances. The legislative history indicates that Congress believes that the public interest would be served by carriage of LPTV stations in communities where there is limited access to signals of full power stations providing local news and information.[34] For this purpose, Section 614(h)(2) defines an LPTV station as "qualified" if that station conforms to the Commission's LPTV rules,[35] broadcasts for at least the minimum number of hours required of television stations by the Commission[36] and adheres to certain Commission requirements regarding nonentertainment programming and employment.[37] These include all obligations applicable to full power stations under Part 73 of our rules with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials and personal attacks; programming for children; and equal employment opportunity. In addition, an LPTV station will not be "qualified" unless the Commission determines that the provision of programming by such station would address local news and informational needs that are not being adequately fulfilled by full power television stations because such full power stations are distant from the LPTV station's community of license.

28. In addition, an LPTV station will not be considered qualified under the 1992 Act unless that station complies with interference regulations consistent with its secondary status pursuant to the Commission's rules,[38] and unless it is within 35 miles of the cable system's headend and delivers to the headend a good quality over-the-air signal as determined by the Commission. Moreover, an LPTV station will only be considered qualified if its community of license and the franchise area of the cable system were both located outside of the largest 160 Metropolitan Statistical Areas (MSAs) on June 30, 1990, and the population of the LPTV community of license on that date did not exceed 35,000. In addition, an LPTV station will only qualify if there is no full power television station licensed to any community within the county or other political subdivision (of a state) served by the cable system.

29. The above criteria define those LPTV stations that will be considered "qualified" pursuant to the 1992 Act so as to be included in the carriage requirements of a cable operator if there are not enough local full power stations to fulfill the cable operator's must-carry obligations.[39] We seek comment on the implementation of this definition. Is a case-by-case review of the operations of individual LPTV stations required to determine whether they qualify for must-carry rights or can general rules be relied on? What factors should determine whether a full power station is local? Should we use the market-based definition set forth in Section 614(h)(1)? Should a specific mileage limit be established? Should the limit be based on county or state boundaries? We note that pursuant to Section 614(h)(2)(F), an LPTV station will not be qualified if there is a full power station licensed to any community within the county or other political subdivision served by the cable system. What procedures should be followed if a full-power station comes on the air that would preempt the LPTV station's must-carry rights? We propose to require the cable operator to give notice to the LPTV station at least 30 days

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[32] We observe that the Chain Broadcasting Report and early radio rules defined a network organization as one that provides programming to two or more interconnected stations for simultaneous broadcast. *See Report on Chain Broadcasting*, Commission Order No. 37, Docket 5060 (May 1941). *See also* 47 C.F.R. §§ 73.132 and 73.232 (radio territorial exclusivity rules); 47 C.F.R. § 73.658(a) (exclusive affiliation of station rule). We also note that the Communications Act of 1934, as amended, defines the term "chain broadcasting" as "the simultaneous broadcasting of an identical program by two or more connected stations." 47 U.S.C. § 153(p). Moreover, for the prime time access and financial interest and syndication rules, a "network" is defined as an entity that provides 15 hours of prime time programming per week on a regular basis to interconnected affiliates that reach at least 75 percent of the television households nationwide. *See* C.F.R. § 73.662(i). However, it appears that this latter definition would not meet the objectives of the 1992 Act since it is too encompassing.

[33] We wish to point out some related definitions and terms from our existing rules for consideration in this context. The current effective competition standard defines an "unduplicated broadcast signal" as "one that does not simultaneously duplicate more than 50 percent of another signal's weekly prime time schedule pursuant to the definition of 'prime time' provided in § 76.5(n). *See* 47 C.F.R. § 76.33(a)(2). Furthermore, in the revised must-carry rules adopted in 1986 we defined "substantially duplicates" in the context of network affiliates. That definition was "regularly duplicates the network programming of one or more stations in a week during the hours of 6 to 11 p.m., local time, for a total of more that 14 hours." *See Report and Order* in MM Docket No. 85-349, *supra*, at 908.

[34] Conference Report at 74.

[35] *See* 47 C.F.R. §§ 74.701-74.784.

[36] *See* 47 C.F.R. § 73.1740.

[37] *See* 47 C.F.R. Part 73.

[38] *See* 47 C.F.R. § 74.703.

[39] Since the effect of the 1992 Act is to create two classes of LPTV stations -- those qualified for must-carry status and those not -- should changes be made to the low power television rules, Part 74, to reflect this distinction? We note, of course, that Section 614(h)(2) specifically states that nothing in this paragraph should be construed to change the secondary status of any LPTV station.

before discontinuing carriage of the LPTV signal. We request comment on whether the cable operator should also be required to notify subscribers. In addition, we seek comment on that aspect of the LPTV definition regarding LPTV stations that the Commission determines would address local news and informational needs that are not being adequately fulfilled by full power stations in the area. What criteria should the Commission consider in determining whether an LPTV station will serve community needs? In what situations must the Commission make such a finding? We tentatively interpret the 1992 Act to require that the Commission make a determination regarding fulfillment of community needs only if an LPTV station asserts must-carry rights against a cable operator and is refused carriage.

30. When a particular LPTV station is determined to be qualified for must-carry protection, Section 614(c) delineates the degree of carriage required of the cable operator. Cable operators are only required to carry LPTV stations if there are not sufficient signals of full power local commercial television stations to fill the channels set aside under Section 614(b). If such is the case, cable systems with a capacity of 35 or fewer usable activated channels are required to carry one qualified low power station. Cable systems with a capacity of more than 35 usable activated channels are required to carry two qualified low power stations. A cable operator required to carry more than one signal of a qualified LPTV station may place the additional station on public, educational or governmental (PEG) channels not in use for their designated purposes, subject to approval by the franchising authority. We seek comment on implementation of these carriage requirements. If a PEG channel is being used to carry an LPTV signal and a qualified PEG user later materializes, when no other channel capacity is available, what procedures should be followed in the event the franchising authority withdraws its approval for use of the PEG channel?

31. *Sales Presentations and Program Length Commercials.* Section 614(g) requires that the Commission conduct a proceeding to determine whether broadcast television stations that are predominantly used for the transmission of sales presentations or program length commercials serve the public interest, convenience, and necessity. Such a proceeding will be initiated in a forthcoming Commission Notice. Pending the outcome of that proceeding, Section 614(g) provides that a cable operator will neither be required to carry nor prohibited from carrying the signal of a commercial television station or video programming service that is predominantly used for these purposes.[40] We seek comment on implementation of this provision. Until a final definition of "predominantly utilized for the transmission of sales presentations or program length commercials" is adopted, we propose to establish an interim definition. Specifically, we seek comment on whether, on an interim basis, to consider channels to be "predominantly utilized" for such purposes if more than 50 percent of their programming week consists of sales presentations or program length commercials.

C. Provisions Applicable to Commercial and Noncommercial Stations

1. Manner of Carriage

32. *Content to be Carried.* Section 614(b)(3)(A) requires a cable operator to carry, in its entirety,[41] the primary video, accompanying audio, and line 21 closed caption transmission of local commercial television stations and, to the extent technically feasible, to carry program-related material contained in the vertical blanking interval or on subcarriers.[42] Section 615(g)(1) includes the same requirements for carriage of NCE stations, but specifically mentions that cable operators shall carry program-related material contained in the vertical blanking interval or on subcarriers "that may be necessary for receipt of programming by handicapped persons or for educational or language purposes." Both sections provide that retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the cable operator. The 1992 Act also provides that cable operators may delete signal enhancements, such as ghost-canceling, from the signal of a commercial station and employ such enhancements at the system headend or headends (Section 614(b)(3)(A)). We seek comment on implementation of these requirements. Should we presume that systems may delete signal enhancements for noncommercial stations, even though this is not specifically mentioned in the 1992 Act? When is carriage of certain information in the vertical blanking interval or on subcarriers "technically feasible?"

33. *Channel Positioning.* Section 614(b)(6) provides that the signals of local commercial television stations carried pursuant to these must-carry rules shall be carried on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator.[43] Similarly, Section 615(g)(5) requires that NCE signals carried pursuant to must-carry protection appear on the cable system channel number on which the qualified local NCE station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable

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[40] Section 614(g)(2) provides that if the Commission determines in its subsequent proceeding that stations primarily transmitting program length commercials and sales presentations serve the public interest, such stations will qualify as local commercial television stations for purposes of the must-carry rules. If the Commission finds that these stations do not serve the public interest, licensees will be given a reasonable period within which to provide different programming, and will not be denied a renewal expectancy solely on this basis.

[41] Section 614(b)(3)(B) provides that the cable operator shall carry the entirety of the program schedule of any television station included on its system unless carriage of specific programming is prohibited, and other programming is authorized to be substituted, pursuant to Section 76.67 (regarding sports'(broadcasts) or Subpart F of Part 76 of the Commission's rules (regarding nonduplication protection and syndicated exclusivity).

[42] In enforcing this provision, it would appear desirable to parallel the related copyright treatment. *See WGN Continental Broadcasting v. United Video*, 51 RR 2d 1617 (7th Cir. 1982) (copyright of a television program includes program material encoded in the vertical blanking interval when "related images" are involved).

[43] Congress indicated that in no event would an agreement concerning channel positioning entered into prior to July 1, 1990, or the expiration of such an agreement, relieve a cable operator of any must-carry requirements. Conference Report at 75.

operator. In either case, disputes regarding channel positioning are to be resolved by the Commission. We recognize that, under these provisions, more than one station may seek and have a valid claim to the same cable channel. Thus, we seek comment on whether a formal priority structure should be established, *e.g.*, should priority be given to a station's channel position on the July 19, 1985 or to its over-the-air channel assignment. We note that stations often seek, in cooperation with local cable operators, to obtain carriage on a uniform channel throughout their service areas. What consideration should such uniformity be given in resolving channel positioning disputes? Alternatively, should system operators be permitted to make a selection within the constraints otherwise established in order to minimize disruption to consumers? We also seek comment on the relationship between the "on-channel" carriage provisions and the obligations of system operators to establish a "basic service tier" containing, at a minimum, all of the signals of stations entitled to mandatory carriage (Section 623(b)(7)). It is our assumption that Congress intended that stations be entitled to their over-the-air channel position only when that channel is encompassed by the basic service tier on the system. Thus, for example, a system with a basic tier encompassing channels 2 through 12 would not need to provide a local station broadcasting on channel 50 with on-channel carriage. We seek comment on all these matters regarding channel positioning requirements.

34. *Signal Quality.* Section 614(b)(4)(A) provides that the signals of local commercial television stations shall be carried without material degradation. That section directs the Commission to adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.[44] In addition, Section 615(g)(2) requires cable operators to provide qualified local NCE television stations with bandwidth and technical capacity equivalent to that provided to commercial television stations carried on the cable system, and to carry the signal of such stations without material degradation.

35. We seek comment on implementation of these requirements. We note that our recent *Cable Technical Report and Order*[45] adopted wide-ranging cable technical standards, and we believe that those standards should satisfy the requirements of the 1992 Act.[46] Our current technical standards, taken as a whole, ensure that no material degradation occurs on any video signal delivered to a subscriber. The *Cable Technical Report and Order* specifically addressed the issue of preventing material degradation to local television signals carried on cable systems by providing that cable operators must make reasonable efforts and use good engineering practices and proper equipment to guard against unnecessary degradation in the signal received and delivered to the cable subscriber. We also encouraged cable operators to work with broadcasters to resolve problems affecting the quality of a particular signal prior to its reception at the cable headend. However, the *Cable Technical Report and Order* also provided that cable operators will not be required to take extraordinary measures to improve upon signals over which they have no control. We invite comment on the applicability of the standards adopted in the *Cable Technical Report and Order* to the current proceeding and on what, if any, changes need to be made in these rules to reflect the requirements of Section 614(b)(4)(A).

36. In addition, Section 614(h)(1)(B)(iii) provides that a cable operator is not required to carry a local commercial television station that does not deliver to the principal headend of a cable system either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment, if the station does not agree to bear the costs of delivering a good quality signal or a baseband video signal. Similar, but slightly different, requirements are contained in Section 614(h)(2)(D) for qualified low power stations. Similarly, Section 615(g)(4) provides that a cable operator shall not be required to carry the signal of any qualified local NCE television station that does not deliver to the cable system's principal headend a good quality signal or baseband video signal. We note our proposed definition of "principal headend" above in Section III-B and seek comment on additional rules needed to implement these requirements.

2. Procedural Requirements

37. *Notification Regarding Deletion or Repositioning of Channels.* Section 614(b)(9) requires a cable operator to provide written notice to a local commercial television station at least 30 days prior to either deleting from carriage or repositioning that station. A cable operator may not delete or reposition a local commercial station during a ratings period.[47] With respect to qualified NCE stations, Section 615(g)(3) requires a cable operator to provide written notice to the station and all subscribers of the cable system at least 30 days before repositioning that station. For purposes of Section 615, "repositioning" includes both reassignment of the station to another channel number and deletion of the station from the cable system. Thus, we propose that cable operators be required to give the station (and subscribers in the case of NCE stations) at least 30 days' notice before deleting a must-carry signal or moving such station to another channel. Additionally, can or should cable operators be required to notify subscribers of the deletion or repositioning of a commercial must-carry signal?

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[44] We believe it is clear from the overall context that the comparability of treatment specified is intended to be between "NTSC" broadcast and cable origination channels.

[45] *See Report and Order* in MM Docket Nos. 91-169 and 85-38, 7 FCC Rcd 2021 (1992), (*Cable Technical Report and Order)* and *Memorandum Opinion and Order* in MM Docket Nos. 91-169 and 85-38, FCC 92-508, adopted November 10, 1992 (*Cable Technical Reconsideration).*

[46] Technical standards for consumer electronics equipment compatibility required under Section 16 of the 1992 Act shall be addressed in a separate proceeding.

[47] We note that Arbitron and A.C. Nielsen conduct surveys on television viewing throughout the year. However, all television markets are included only in four, four-week audience sweep periods -- roughly February, May, July and November -- every year. We note that the legislative history refers to these sweep periods (Senate Report at 86) and we seek comment on whether it is reasonable to prohibit deletion or channel repositioning solely during these four national ratings periods.

38. *Compensation for Carriage.* Sections 614(b)(10) and 615(i) prohibit a cable operator from accepting or requesting compensation for carriage or for channel positioning of any commercial or NCE television station carried in fulfillment of the mandatory carriage provisions. Those sections provide, however, that the station, commercial or NCE, may be required to bear the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system. Moreover, the cable operator may accept payments from commercial must-carry stations that would be considered distant signals pursuant to the Copyright Act, 17 U.S.C. Section 111, as indemnification for any increased copyright liability as a result of carrying the signal. Similarly, a cable operator shall not be required to carry a qualified local NCE station not already being carried that would be considered a distant signal for copyright purposes absent indemnification for any increased copyright costs. In addition, a cable operator may continue to accept payment for carriage or channel positioning of the signal of a local commercial television station entitled to must-carry protection through the expiration of an agreement providing for such compensation between the cable operator and the local commercial television station entered into prior to June 26, 1990. We seek comment on implementation of these provisions.

39. *Remedies.* Section 614(d)(1) provides that whenever a local commercial television station believes that a cable operator has failed to meet its must-carry obligations, such station shall notify the operator, in writing, of the alleged failure.[48] Such broadcast station is required to identify its reasons for believing that the cable operator is obligated to carry the signal or has otherwise failed to comply with channel positioning or repositioning or other requirements.[49] The cable operator shall, within 30 days of such written notification, respond in writing and agree to carry the signal or state its reasons for believing that it is not obligated to do so, or, in the case of a channel positioning dispute, agree to the channel position requested or state that it is in compliance with the 1992 Act. A local commercial television station that is denied carriage or channel positioning or repositioning by a cable operator, or that does not receive a timely response from the cable operator, may file with the Commission a complaint describing how the cable operator has failed to meet its obligations and the basis for the station's allegations.[50] As set forth in Section 615(j), if a local NCE station believes that a cable system has failed to fulfill its must-carry obligations, that NCE station need not first notify the cable system but may immediately file a complaint with the Commission. The Commission must afford cable operators the opportunity to respond to such complaints. We seek comment on the implementation of these requirements. We propose that all such complaints be served on cable operators, who would then be afforded 10 days to respond in writing. We also ask commenters to consider whether there should be a time limit on the filing of such complaints and if the Commission has the authority to impose such a time limit. For example, can or should we require a commercial station filing a complaint with the Commission do so within 30 (or 60) days of the date of the cable operator's written response to its notification? Can or should an NCE station filing a complaint with the Commission be required to do so within 30 (or 60) days of the triggering action by the cable operator (*e.g.*, discontinuing carriage, repositioning, refusing carriage upon request)? Additionally, in the case of a commercial station being denied carriage or channel positioning, we propose that the station be permitted to file a complaint with the Commission immediately upon receipt of the cable operator's response (*i.e.*, the station does not have to wait for expiration of the 30-day period).

40. The 1992 Act also provides that within 120 days after the date a complaint is filed with the Commission, the Commission shall determine whether the cable operator has met its must-carry obligations. If the Commission determines that the cable operator has complied with the must-carry rules, it shall dismiss the complaint (Sections 614(d)(3) and 615(j)(3)). If the Commission agrees with the broadcast station's complaint, it will order the cable system to take remedial action. Section 614(d)(3) specifically provides that if a cable system is determined to have wrongfully refused carriage of a local commercial station, the Commission shall order the cable operator to begin carrying that station and to continue such carriage for at least 12 months. With respect to remedies for NCE stations, Section 615(j)(3) provides that the Commission shall take such remedial actions as are necessary. We seek comment on implementation of these remedial provisions in the 1992 Act. We also request comment on whether we should apply the provisions of Section 76.7 of the Commission's rules (the special relief rules), perhaps with a shorter time period for responsive pleadings, as indicated above, to expedite such complaints, or whether we should use standard notice and comment procedures. We note that we currently use Section 76.7 for the resolution of disputes regarding the existing effective competition standard.[51] We also note that Section 8 of the Communications Act of 1934 as amended requires parties filing requests for special relief in the cable area to pay fees, yet mass media enforcement actions are generally exempt from the fee requirement.[52] Since these remedies are a form of enforcement action, should fees be waived in such cases?

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[48] The 1992 Act uses the term local commercial station to refer to full power signals. Thus, this section appears not to provide for LPTV stations. We believe that it would be appropriate for LPTV stations entitled to carriage to be accorded the same rights as other local commercial must-carry signals in this regard. We seek comment on this matter.

[49] We note that, in the absence of must-carry rules, the Commission established a process to resolve complaints from local broadcast stations that allege competitive harm by a network-owned cable system with respect to carriage, channel repositioning or "by-passing" when it revised the network-cable cross-ownership rules. *See Report and Order* in MM Docket No. 82-434, 7 FCC Rcd 6156 (1992) *reconsideration pending.* We request comment regarding the effect of the 1992 Act on that process and the extent to which the more specific statutory carriage obligations take precedence over our Docket 82-434 requirements.

[50] The legislative history indicates that this section is not intended to deprive federal or state enforcement authorities or other parties any rights or remedies which they may have under other laws relating to competition or consumer interests, nor is it intended to deprive parties of any contractual remedies. Senate Report at 87.

[51] 47 C.F.R. §76.33(c).

[52] 47 U.S.C. § 158.

IV. RETRANSMISSION CONSENT

A. Introduction

41. The Cable Act of 1992 amends Section 325 of the Communications Act of 1934 by adding provisions governing retransmission of broadcast signals by cable systems and other multichannel video programming distributors. A multichannel video programming distributor (or "multichannel distributor") is "a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming."[53]

42. The scope of this definition is important for two reasons: (1) it defines the entities subject to the retransmission consent requirement; and (2) "multichannel video program programming distributor" is used extensively in other parts of the 1992 Act, *e.g.*, in connection with the effective competition definition (Section 3), program access (Section 9), program ownership (Section 11), program carriage agreements (Section 12), and equal employment opportunity (Section 22). Thus, as a preliminary matter, we seek comment on the scope of this definition. For example, does it encompass satellite master antenna or master antenna television systems?[54] We also note that, although the literal language of the "multichannel video program distributor" definition is broad in its coverage, its objective appears to leave the Commission flexibility to create a measure of regulatory parity among entities that are "in the same market" and, generally, at the same distribution level with cable systems. Further, where there is a differentiation between an entity performing a service delivery function and an entity selling programming that is delivered over the facilities of another, it appears logical that the retransmission consent obligation should fall on the entity directly selling programming and interacting with the public. Under this approach, the obligations would fall on a "wireless cable" provider using leased MMDS and ITFS facilities rather than on the MMDS and ITFS licensees. Similarly, where there is a chain of distribution to the public potentially involving more than one multichannel video program distributor, it would appear consistent with the objectives of the 1992 Act for the obligation involved to inure to the distributor in the chain that interacts directly with the public. Thus, for example, the obligation would not fall on a microwave common carrier delivering multiple channels of programming to cable system customers, but would be the obligation of the cable systems involved. We seek comment on these definitional issues.

43. Section 325 as amended also directs the Commission to "establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection."[55] The general prohibition of retransmission without broadcaster consent in 47 U.S.C. Section 325(b)(1) applies to the signal of any "broadcasting station" and is not expressly limited to television stations. However, the 1992 Act directs the Commission to undertake a rulemaking proceeding applicable to "*television* broadcast stations" (emphasis added).[56]

44. This section addresses five issues relevant to retransmission consent. First, we review the scope of retransmission consent. Second, we outline the proposed schedule for implementation of retransmission consent, including the election by stations of retransmission consent or must-carry rights. Third, we examine the relationship between retransmission consent and Section 614 of the 1992 Act. Fourth, we address a limited number of issues relating to the retransmission consent contracts that stations and cable operators might sign. Fifth, we address the requirement of Section 325(b)(3)(A) to ensure that our retransmission consent rules do not conflict with our obligation under Section 623(b)(1) to keep cable basic service tier rates reasonable. We seek comment on all of the specific proposals and interpretations of the Cable Act of 1992 mentioned herein.

B. The Scope of Retransmission Consent

45. The 1992 Act provides that, "[F]ollowing the date that is one year after the date of enactment,"[57] no cable system or other multichannel distributor "shall retransmit the signal of a broadcasting station, or any part thereof, except--(A) with the express authority of the originating station; or (B) pursuant to Section 614, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section."[58] As discussed in the preceding section of this *Notice*, Section 614 of the 1992 Act details cable operators' obligation to carry local commercial television signals. Within one year of the date of enactment, and every three years thereafter, television stations covered by Section 325(b) are required to elect either retransmission consent rights or must-carry rights under Section 614.[59] Each television station will make a single election for each cable system in its market. The 1992 Act provides that if there is "more than one cable system which services the same geographic area, a station's election shall apply to all such cable systems." Based on the legislative history, we construe this to mean that a station must make the same election for all directly competing cable systems, but that it could make different elections for cable systems that are in the same local television market but do not overlap.[60] We recognize that cable system service areas sometimes overlap without being identical. Accordingly, we seek comment on what degree of overlap between cable system service areas should trigger

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[53] 47 U.S.C. § 522(12).

[54] Related to this definitional question is the question of whether any distinctions in the manner of applying the retransmission consent provisions are warranted based on whether the entity involved is covered or not covered by the compulsory copyright licensing provisions of the Copyright Act.

[55] 47 U.S.C. § 325(b)(3)(A).

[56] It is not evident from the legislative history and from the context in which the 1992 Act was adopted whether Congress intended to apply the retransmission provisions to signals other than television signals. Thus, we seek comment on what, if any, action the Commission can or should take with respect to retransmission of radio signals by multichannel distributors.

[57] The Cable Act of 1992 was enacted on October 5, 1992. Hence, the retransmission consent provisions become effective on October 6, 1993.

[58] 47 U.S.C. § 325(b)(1).

[59] 47 U.S.C. § 325(b)(3)(B). The election requirement applies only to commercial television stations. *See* 47 U.S.C. § 325(b)(2)(A).

[60] Conference Report at 76. "In situations where there are competing cable systems serving one geographic area, a broadcaster must make the same election with respect to all such competing cable systems." *See also* Senate Report at 33. (The election "will apply to any so-called overbuild systems which serve the same geographic area."

the "same election" requirement. We also observe that, when commercial television stations make an election between must-carry and retransmission consent rights, they necessarily do it only with regard to retransmission within the local market, since Section 614 requires carriage of certain "signals of local television stations."[61] Out-of-market retransmission of a commercial television station's signal will occur only pursuant to a retransmission consent agreement.

46. There are four exceptions to the above retransmission consent requirement. It does not apply to (1) noncommercial broadcasting stations; (2) retransmission directly to a home satellite antenna of the signal of a broadcast station that is not owned or operated by, or affiliated with, a broadcasting network, provided that the signal was retransmitted by a satellite carrier on May 1, 1991; (3) retransmission directly to a home satellite antenna of the signal of a network owned or affiliated broadcasting station, provided the household receiving the signal is an unserved household; and (4) retransmission by a cable operator or other multichannel distributor of a superstation signal, provided that the signal was obtained from a satellite carrier and the originating station was a superstation as of May 1, 1991.[62]

47. As noted above, the exceptions to the retransmission consent requirement include certain out-of-market retransmissions of television signals if the signal is delivered via satellite. However, out-of-market retransmissions of television signals that are delivered to a cable system or other multichannel distributor by other means, such as microwave, or whose satellite carriage began after May 1, 1991, are not exempt from retransmission consent requirements. Those signals can only be retransmitted by cable systems or other multichannel distributors "with the express authority of the originating station."

C. Implementing Retransmission Consent

48. Because commercial television stations are required to choose between retransmission consent and must-carry rights, the implementation of the new Section 325(b) and the new Section 614 must be addressed jointly. The Commission is required to complete its retransmission consent rulemaking proceeding within 180 days of enactment (47 U.S.C. § 325(b)(3)(A)). The Commission must "issue regulations implementing the requirements" of Section 614 within 180 days of enactment (Section 614(f)). We interpret our Congressional instructions to require putting the signal carriage rules into effect promptly, and so we do not anticipate delaying the effective date of the must-carry rules until the retransmission consent provisions become operational (*i.e.*, October 6, 1993). However, some cable systems may not be in immediate compliance with the new signal carriage requirements and their decisions on how to comply may depend in part on the rules adopted, particularly with regard to market definition and low power television carriage. Therefore, we believe that it would be appropriate to allow a limited amount of time for cable systems to come into compliance with the new must-carry rules. We seek comment on this matter.

49. Section 614(b)(9) requires, *inter alia*, that cable operators provide at least 30 days' advanced written notice before deleting a local commercial television station from carriage. In the initial period after the must-carry rules become effective and before the retransmission consent provisions become effective, we believe that this provision applies to all local commercial television stations. We seek comment on this tentative interpretation.

50. We also seek to define the election process in a manner that will allow broadcasters and cable operators to make a relatively smooth transition from the current regulatory regime to that of the 1992 Act. Broadcast stations, pursuant to regulations to be adopted by the Commission, must make their election between must-carry and retransmission consent "within one year after the date of enactment" of the 1992 Act. We seek comment on an appropriate date by which this selection must be made and on the degree of flexibility we have under the 1992 Act to require stations to make their initial election earlier than the stated one year final deadline. An earlier deadline might facilitate a smooth transition to retransmission consent and would accommodate the need to provide subscribers with some advance warning of carriage or rate changes. In this connection, we ask commenters to address the interplay between retransmission consent and the cable compulsory license royalty regulations, which, we understand, treat a signal as carried for a full six-month reporting period if it is carried for any part of the period. The Copyright Office reporting periods run from January 1 to June 30 and from July 1 to December 31. We also seek comment on whether broadcasters' subsequent triennial elections should be subject to a deadline earlier than the final October 6 date specified in the statute. Pursuant to those elections, regardless of the deadline for making them, changes in broadcasters' status would become effective on October 6, 1996, 1999, 2002, etc.

51. We propose to require each station to place a notarized copy of its election statement in its public file and to send a copy to every cable system within the station's market. We seek comment on this proposal. Because television stations must make their elections on a system-by-system basis (with limited exceptions), it is possible that a station might fail to notify one or more cable systems in its local market of its election. What should the consequences of such a failure be? Should we prescribe a default election procedure? What rules, if any, should we adopt to address this situation?

52. We recognize that there will be new commercial television stations going on the air in the years ahead. We propose that new stations be required to make their initial retransmission consent/signal carriage election within 30 days of the time that they commence regular broadcasts. They will make subsequent elections according to the schedule described in the previous paragraph. If a new station elects must-carry status, some cable operators may be required by Section 614 to carry it. In order to do so, these operators may need to drop or move another service. To allow time for such adjustments, we propose that a new station's election take effect 60 days after it is made. We

[61] Section 614(a).

[62] The terms "satellite carrier," "superstation," and "unserved household" are defined in 17 U.S.C. § 119(d) as in effect on the date of enactment of the 1992 Act. *See* 47 U.S.C. § 325(b)(2).

seek comment on these proposals and on how we should determine when a new station commences regular broadcasts.

D. Retransmission Consent and Section 614

53. Section 325(b)(4) provides that if a station elects to exercise retransmission consent rights with respect to a cable system, "the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system." In this subsection of the Notice, we seek comment on the relationship between retransmission consent and Section 614.

54. *Retransmission Consent and the Must-Carry Signal Complement.* The 1992 Act requires that "|A| cable operator shall identify, upon request by any person, the signals carried on its system in fulfillment of the requirements of this section."[63] However, neither the 1992 Act nor the Conference Report address whether cable operators may use local signals carried pursuant to retransmission consent agreements to meet the signal carriage requirements of Section 614. However, the Senate Report does address this issue. Because there was not a retransmission consent provision in the House cable bill, and because the conference agreement simply adopts the Senate provision, we are inclined to rely on the Senate Report. It states that "the FCC's rules should provide that carriage of a station exercising its right of retransmission consent will count towards the number of local broadcast signals that a cable system is required to carry under sections 614 and 615."[64] We therefore tentatively conclude that cable operators may use local retransmission consent channels to meet the Section 614 signal carriage requirements and we seek comment on this tentative interpretation.

55. *Non-Applicability of Provisions of Section 614 to Retransmission Consent Signals.* Section 614 includes several provisions governing the manner in which cable operators shall carry local television stations. For example, cable operators must carry the primary video, accompanying audio, closed caption transmissions, and, to the extent possible, other program-related material in the vertical blanking interval or on subcarriers (Section 614(b)(3)(A)). In addition, cable operators must carry the stations' complete program schedules (Section 614(b)(3)(B)). The must-carry provisions of the 1992 Act also govern channel positioning (Section 614(b)(6)), provision of signals to all subscribers of a cable system (Section 614(b)(7)), and notification by cable operators of stations prior to deleting or repositioning them (Section 614(b)(9)). Moreover, cable operators are prohibited from accepting or requesting compensation from stations electing must-carry privileges (Section 614(b)(10)).

56. A reading of Section 325(b)(4) and Section 614 in their entirety suggests that the provisions enumerated in the previous paragraph apply only to local stations carried pursuant to an election of must-carry status. This is our tentative interpretation. Section 614 is captioned "Carriage of Local Commercial Television Signals" and, by itself, suggests that the provisions appearing thereunder are waived if retransmission consent is elected. However, we note that the wording of these provisions is not uniform. For example, the channel positioning provision refers to "[E]ach signal carried in fulfillment of the carriage obligations of a cable operator under this section," while the signal quality provision refers to "signals of local commercial television stations that a cable operator carries." The signal availability provision speaks of "|s|ignals carried in fulfillment of the requirements of this section," while the content to be carried provision refers to "the entirety of the program schedule of any television station carried on the cable system" (subject to the Commission's sports broadcasting, network nonduplication, and syndicated exclusivity rules). In order to resolve this possible ambiguity, we seek comment on our tentative interpretation that these provisions, in fact, apply only to must-carry stations.

E. Retransmission Consent Contracts

57. When a cable system must have "the express authority of the originating station" to retransmit its television signal, we propose to require that such authority be conveyed in writing. It is not our intention, nor do we have the resources, to regulate every detail of the terms and conditions of the authority granted, but certain specific provisions of the 1992 Act do need to be addressed. As a preliminary matter, we note that Section 614(d) establishes a mechanism for resolving disputes between cable operators and local commercial television stations regarding operators' obligations under Section 614, but there is no procedure specified for resolving disputes between cable operators and television stations over retransmission consent authorization. We tentatively conclude that such disputes should be resolved in a court of competent jurisdiction and we seek comment on this conclusion.

58. *Contracts Between Cable Operators and Local Stations.* The previous subsection enumerated a number of provisions concerning manner of carriage that appear mandatory only for carriage of must-carry signals. We note that nothing prevents cable operators and television stations from negotiating retransmission consent contracts that contain provisions identical to those in Section 614. Moreover, in contrast to the case of must-carry stations (Section 614(b)(10)), cable operators may accept or request monetary payment or other valuable consideration in exchange for favorable channel positioning (with limited exceptions, noted below), or for signal carriage.

59. We already have regulations that address matters similar to those addressed in Section 614. In particular, Section 76.62 of the Commission's rules requires that "[w]here a television broadcast signal is carried by a cable system, the signal shall be carried without material degradation and programs broadcast shall be carried in full, without deletion or alteration of any portion thereof." We seek comment on whether this regulation requires any amendment in light of the 1992 Act, particularly with respect to signals carried pursuant to retransmission consent agreements. We tentatively conclude that it would not. We also seek comment on whether our general cable television technical standards rules should apply to cable carriage of retransmission consent signals.[65]

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[63] Section 614(b)(9).

[64] Senate Report at 37-38. *See also id.* at 84.

[65] *See generally Cable Technical Report and Order* and *Cable Technical Reconsideration, supra.*

60. Section 325(b) appears to allow cable systems to decline to carry "the complete program schedule" of such stations. Since carriage of "the complete program schedule" is a more stringent requirement than simply carrying in full "programs broadcast", it appears that this part of Section 76.62 (in essence requiring that, if a program is carried, it must be carried in full) can co-exist with Sections 325(b) and 614 of the 1992 Act.[66] We seek comment on whether the new Section "B325(b) requires us to revise Section 76.62.

61. We also seek comment on two issues related to the question of carriage of a station's full program schedule. First, although cable operators apparently do not have to carry the full schedule of local stations carried pursuant to retransmission consent, we have tentatively decided that those stations will count against the must-carry signal complement. If a cable system wishes to count such signals for Section 614 purposes, should we require some minimum quantum of carriage and, if so, what should it be? We also invite interested parties to comment on the likelihood that cable operators and local stations would desire or agree to retransmit less than the full program schedule of the stations. Second, how will retransmission consent affect the carriage of signals that are distant with respect to a particular cable system but are not superstations?[67] Such stations can only be carried pursuant to a retransmission consent agreement. What is the likelihood that such stations may find it appropriate or necessary to offer or accept carriage of less than their full program schedule?[68] How might negotiations of this nature be affected by the distant signal royalty calculation regulations of the U.S. Copyright Office?[69]

62. Section 325(b)(5) provides that stations exercising retransmission consent rights "shall not interfere with or supersede the rights under Section 614 or 615 of any station electing to assert the right to signal carriage under that section." The Conference Report gives the example that "the FCC should not permit a station negotiating for retransmission rights to contract with a cable system for a channel position topwhich another station is entitled under sections 614 and 615."[70] We seek comment on how to codify this provision.

63. The Conference Report also addresses the situation n which a television station elects to exercise its signal carriage rights, does not gain carriage pursuant to Section 614, and subsequently is approached by a cable system wanting to carry its signal. The Report declares that "|I|n the event that the cable system elects not to carry such a signal in fulfillment of its obligations under section 614, for example, because it already has carried enough local broadcast stations to fill one-third of its channel capacity, the conferees intend that the broadcaster be permitted to reassert its right to require consent before carriage by the cable system under other conditions." In other words, if the cable system proposes to carry the signal, but not to list it among the channels carried to meet the requirements of Section 614, then the station must have the chance to require its consent for carriage. We propose that stations that do not assert their retransmission consent rights in such circumstances and subsequently receive carriage by a cable system shall be governed by the terms of Section 614. A cable system remains free to change the roster of signals carried to fulfill the requirements of Section 614 by deleting a signal, with 30 days' notice, and replacing it with another. As explained earlier in this paragraph, should the cable system subsequently decide to offer the deleted station carriage not pursuant to Section 614, the station would have the chance to reassert retransmission rights. This suggests that cable operators would be permitted to remove a television signal from its Section 614 list (*i.e.*, stop carrying the signal pursuant to Section 614) without deleting it from carriage, provided that the station has the opportunity to reassert retransmission consent rights. We seek comment on whether there are any other circumstances in which a station is permitted by the statute, in effect, to change its election in the midst of a three-year period. In such circumstances, and in the circumstances specified earlier in this paragraph, how should the change in election be effected?

64. *Program Exhibition Rights and Retransmission Consent.* Section 325(b)(6) provides that "|N|othing in this section shall be construed as modifying the compulsory copyright license established in section 111 of title 17, United States Code, or as affecting existing or future video programming licensing agreements between broadcast stations and video programmers."[71] The Senate Report thus distinguishes between "the authority granted broadcasters under the new Section 325(b)(1) of the 1934 Act to consent or withhold consent for the retransmission of the broadcast signal, and the interests of the copyright holders in the programming contained in that signal."[72] Accordingly, when a station elects retransmission consent, a cable system (or other multichannel video programming distributor) must obtain the permission of the station to carry its signal -- even if the system has already secured permission to retransmit the individual programs carried on that signal through either the cable compulsory license or the express agreement of the copyright holders.

65. In turn, we must determine whether the broadcast station need obtain any permission from the copyright holders of its programming before granting retransmission consent to a cable system (or other multichannel video programming distributor). We note, first, the above-quoted

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[66] Cable operators availing themselves of the cable compulsory license are required to retransmit programs without alteration. 17 U.S.C. § 111(c)(3). The cable compulsory license is, of course, applicable to programs carried on retransmission consent signals as well as programs retransmitted on must-carry signals.

[67] For the purposes of Section 325(b)(1), "superstation" has the meaning given to it in 17 U.S.C. § 119(d)(9), *i.e.*, "a television broadcast station other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier."

[68] Commenters should address this question in conjunction with the discussion below of program exhibition rights and retransmission consent.

[69] We understand that cable operators must pay for carriage of the full signal even if they do not retransmit the entire program schedule. *See* 17 C.F.R. § 201.17(f)(3). We invite the U.S. Copyright Office to comment in this proceeding on issues, such as this one, to which its procedures are relevant.

[70] Conference Report at 76.

[71] The cable compulsory copyright license (17 U.S.C. §111) is also applicable, of course, to programs retransmitted on must'carry signals.

[72] Senate Report at 36.

statutory instruction not to construe this section as affecting existing or future program licensing agreements.[73] This language suggests that any rights created by Section 325(b)(1)(A) can be superseded by the express terms of existing or future agreements between program suppliers and broadcast stations concerning retransmission rights. We seek comment on this interpretation.[74] We also seek comment on whether it would be correct to interpret Section 325(b)(1)(A) as enabling broadcasters, in the absence of any express contractual arrangement, to grant or withhold retransmission consent without authorization from the copyright holders.

F. Reasonableness of Rates

66. Section 325(b)(3)(A) requires the Commission to consider in this proceeding the impact of retransmission consent on rates for the basic service tier and to ensure that our retransmission consent regulations do not conflict with our Section 623(b)(1) obligation "to ensure that the rates for the basic service tier are reasonable." In a separate proceeding, we will be seeking comment on proposed rules for setting basic service rates for cable systems not subject to effective competition. *See* Section 623(b)(2).

67. Section 623(b)(2)(C) directs us to take account of seven factors in prescribing our regulations for basic service rates. Among them are "the direct costs (if any) of obtaining, transmitting, and otherwise providing signals carried on the basic service tier . . . and changes in such costs" and "a reasonable profit, as defined by the Commission consistent with the Commission's obligations to subscribers under paragraph (1)" (*i.e.*, our obligations to keep basic rates reasonable).

68. We believe that any fees paid or other valuable consideration granted by cable operators in exchange for retransmission consent clearly qualify as "direct costs . . . of obtaining, transmitting, and otherwise providing signals." However, by directing the Commission to "take into account" this and other factors, the 1992 Act appears to leave us considerable discretion in prescribing rules governing recovery of those costs. The 1992 Act also directs us to take into account a reasonable profit for the cable operator.[75] Hence, it appears that the Commission has the ability, as it adopts rate regulation procedures, to meet its Section 623(b)(1) obligations.

69. The foregoing suggests that there is no specific regulatory action that the Commission need take pursuant to Section 325(b) concerning the impact of retransmission consent compensation on basic rates. However, the Commission does have the authority, pursuant to Section 623(b)(2), to decide on the appropriate treatment of retransmission consent compensation in the determination of basic service rates. We therefore plan to leave this task to our rate regulation proceeding and propose no specific regulatory measures to address this issue herein. We seek comment on this approach. We urge those who advocate that we adopt regulations in this proceeding regarding reasonableness of rates to be specific in their proposals.

V. ADMINISTRATIVE MATTERS

A. Regulatory Flexibility Analysis

70. As required by Section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice of Proposed Rule Making*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this *Notice of Proposed Rule Making*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

B. Ex Parte

71. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. Sections 1.1202, 1.203, and 1.206(a).

C. Comment Dates

72. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before January 4, 1993, and reply comments on or before January 19, 1993. To file formally in this proceeding, you must file an original plus five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

D. Ordering Clauses

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[73] More specifically, the Senate Report "emphasizes that nothing in this bill is intended to abrogate or alter existing program licensing agreements between broadcasters and program suppliers, or to limit the terms of existing or future licensing agreements." *Id.*

[74] In this context, commenters should also address the question of whether affiliation contracts between networks and television broadcast stations constitute "existing or future video program licensing agreements between broadcasting stations and video programmers" (Section 325(b)(6))? If so, can networks negotiate affiliation contracts that supersede rights created by Section 325(b)(1)(A)?

[75] The Conference Report is more explicit, noting that "[T]he conferees agree that the cable operators are entitled to earn a reasonable profit." Conference Report at 63. The legislative history of this provision appears to suggest that the Commission may interpret the term "reasonable profit" in light of profits earned on the full range of services provided by the cable operator. *Id.*

73. Authority for this proposed Rule Making is contained in Sections 4(i) and (j), and 303 of the Communications Act of 1934, as amended, and the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385.

74. For further information on this proceeding, contact Marcia Glauberman, Mass Media Bureau, (202) 632-5414 or Jonathan Levy, Office of Plans and Policy, (202) 653-5940.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds:

I. *Reason for action.* This action is taken to implement certain provisions of the Cable Television Consumer Protection and Competition Act of 1992.

II. *Objectives.* The Cable Act of 1992 and the subsequent Commission actions to implement it are intended to set forth a regulatory scheme for cable systems in the area of broadcast signal carriage and channel usage. Congress adopted the statute to address its concerns regarding the performance of the cable industry in these areas since the 1984 Cable Act was enacted. The must-carry provisions of this act are intended to give local commercial and noncommercial television stations carriage rights on a mandatory basis on cable systems. The retransmission consent provision prohibits cable operators, in certain defined circumstances, from carrying the signals of television stations without first obtaining their consent and permits them to be compensated for such carriage.

III. *Legal basis.* Action as proposed for this rule making is contained in Sections 4(i) and (j), and 303 of the Communications Act of 1934, as amended, and the Cable Television Consumer Protection and Competition Act of 1992.

IV. *Reporting, recordkeeping and other compliance requirements.* None.

V. *Federal rules which overlap, duplicate or conflict with this rule.* None.

VI. *Description, potential impact and number of small entities affected.* In order to implement the Cable Television Consumer Protection and Competition Act of 1992, the Commission has proposed to add new rules and modify others. Depending on the extent of such actions, different cable systems may be affected in different ways. For example, there are incremental thresholds for signal carriage obligations on cable systems based on channel capacity. With respect to small systems, we note that the statute exempts systems with 300 or fewer subscribers and fewer than 13 channels, although such systems may not delete from carriage any broadcast television station they carry. We observe that there are about 3,200 cable systems with 300 or fewer subscribers, representing 29% of all systems and less than one percent of all cable subscribers. No information is available to indicate what proportion of these systems have 12 or fewer channels. The retransmission consent provision will provide broadcasters, large and small, with the opportunity to be compensated for the carriage of their signals should they choose this option in lieu of must-carry status.

VII. *Any significant alternatives minimizing impact on small entities and consistent with stated objective* . None.

Statement of Commissioner James H. Quello
Implementation of the Cable Television Consumer Protection and Competition Act of 1992 — Broadcast Signal Carriage Issues

After promoting the cause of must carry for the past seven years, it is nice to finally have someone agree with me. It is especially nice to be joined by the overwhelming majority of Congress.

While I have been most closely associated with the must carry issue, I also have strongly supported the adoption of a retransmission consent requirement. I believe these new requirements represent basic justice for broadcasters, and for the viewers as well. I never felt that the Commission fully defended must carry rules in the past, which led to the predictable result of losing in court twice. Now, with a new law, backed by ample congressional findings, I believe that must carry has the support it deserves, and will need to withstand the court challenge that already has been filed.

Our job at the Commission, in addition to defending the new law, is to fashion clear and workable standards for implementing must carry and retransmission consent. With that in mind, I urge interested parties to file comments in this proceeding to help us with some of the complex issues we will face in fashioning the new rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 92-13

In the Matter of

Tariff Filing Requirements for
Interstate Common Carriers

REPORT AND ORDER

Adopted: November 5, 1992; Released: November 25, 1992

By the Commission:

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I. INTRODUCTION

1. In a *Notice*, released January 28, 1992,[1] the Commission initiated this rulemaking to review the lawfulness and future application of the tariff forbearance rules we adopted nearly a decade ago in *Competitive Carrier*.[2] In particular, we sought comment on whether, in light of intervening court decisions and a challenge to those rules by the American Telephone and Telegraph Company (AT&T), the Commission had authority under the Communications Act of 1934 (Communications Act or the Act) "to continue to permit nondominant carriers not to file tariffs."[3] We also sought comment on regulatory alternatives in the event we determined that our existing tariff forbearance rules were unlawful.[4]

2. In response to the *Notice*, we have received and reviewed comments from more than 40 parties representing virtually every segment of the interstate telecommunications industry, including long distance carriers, local exchange carriers, and telecommunications users.[5] On the basis of this record, we now conclude that our existing tariff forbearance rules are lawful and serve the public interest. Accordingly, we reaffirm our decision in *Competitive Carrier* that domestic carriers classified as "nondominant" and subject to forbearance may, but need not, file interstate tariffs. Consequently, we do not address the additional issues raised in the *Notice*, which were conditioned upon a contrary finding.

II. BACKGROUND

A. The Competitive Carrier Proceeding

3. Until the 1960s, AT&T, through its then-subsidiary Bell Operating Companies and in cooperation with some 1600 independent local telephone companies, provided virtually all interstate telephone service. Competitive entry into interstate common carriage began on a small scale in 1969, when the Commission authorized Microwave Communications, Inc. (now MCI) to construct and operate microwave circuits between Chicago and St. Louis for the

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[1] *Tariff Filing Requirements for Interstate Common Carriers* (CC Docket No. 92-13), Notice of Proposed Rulemaking, 7 FCC Rcd 804, 57 Fed. Reg. 6487 (1992) (*Notice*).

[2] *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor* (CC Docket No. 79-252) (*Competitive Carrier*), Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979) (*Competitive Carrier Notice*); First Report and Order, 85 FCC 2d 1 (1980) (*First Report*); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981) (*Competitive Carrier Further Notice*); Second Report and Order, 91 FCC 2d 59 (1982) (*Second Report*), *recon.*, 93 FCC 2d 54 (1983); Second Further Notice of Proposed Rulemaking, FCC No. 82-187, 47 Fed. Reg. 17,308 (1982); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 46,791 (1983); Third Report and Order, 48 Fed. Reg. 46,791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983) (*Fourth Report*); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 922 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984) (*Fifth Report*), *recon.*, 59 Rad. Reg. 2d (P&F) 543 (1985); Sixth Report and Order, 99 FCC 2d 1020 (1985) (*Sixth Report*), *rev'd MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985) (*MCI v. FCC*).

[3] *Notice*, 7 FCC Rcd at 805, para. 8.

[4] *Id.*

[5] A list of the parties participating in this proceeding is attached hereto as Appendix A.

provision of point-to-point common carrier service.[6] Throughout the 1970s, the Commission expanded in increments the categories of services subject to competitive entry.[7] Following the D.C. Circuit's *Execunet* decision,[8] we opened interstate services generally to competition by the end of the decade.[9]

4. The Commission initiated the *Competitive Carrier* proceeding in 1979 to examine the proper scope of regulation in the new era of competition and, in particular, to consider amendment of the tariff filing requirements for competitive telecommunications common carriers.[10] We proposed to apply different rules to different carriers depending upon the extent of their market power. "Dominant" carriers -- primarily AT&T and its then-affiliated Bell Operating Companies -- would continue to be subject to full tariff regulation.[11] For the new competitive (or "nondominant") carriers, which lacked market power, we proposed a more light-handed approach.[12]

5. The Commission posited in *Competitive Carrier* that nondominant carriers, precisely because they lacked market power, would be unable to charge unjust and unreasonable rates in violation of Section 201(b) of the Communications Act,[13] or to discriminate unreasonably in violation of Section 202(a) of the Act.[14] We tentatively concluded that, in these circumstances, traditional tariff regulation of nondominant carriers not only was unnecessary to ensure lawful rates, but actually could be counterproductive: it could raise carrier costs (and rates), delay new services, and encourage collusive pricing.[15]

6. As an initial step in the regulatory reform process, we adopted a "streamlined" form of tariff regulation for nondominant carriers, which included reduced notice periods and cost support requirements for tariff filings, and the requirement that parties seeking suspension of such filings overcome a presumption of lawfulness.[16] Concurrently, however, we sought comment on two alternatives to streamlining. Under one option, the Commission would "forbear" from exercising the full range of its Title II regulatory powers, including tariff regulation, while continuing to apply the Act's substantive ratemaking standards contained in Sections 201(b) and 202(a).[17] Under a second, "definitional option," we would find telecommunications providers that lacked market power not to be "common carriers" under the Act,[18] and thus subject to broad deregulation.[19]

7. In the *Second Report*, issued in 1982, we adopted the forbearance option, without ruling on our authority to pursue a definitional approach.[20] Proceeding in a cautious, incremental manner, we applied forbearance first to resale carriers, ordering that such carriers "no longer need adhere to ... the tariff filing requirements of Section 203."[21] The substantive standards contained in Sections 201(b) and 202(a) thereafter would be enforced against such carriers primarily through the complaint process under Section 208 of the Act.[22] In 1983, the Commission extended this permissive detariffing treatment to other nondominant carriers, including so-called "specialized carriers" such as MCI and US Sprint,[23] and, a year later, we accorded such treatment to virtually all remaining categories of nondominant carriers.[24]

8. The Commission converted its permissive detariffing rules into a mandatory detariffing requirement for nondominant carriers in 1985.[25] The United States Court of Appeals for the District of Columbia Circuit vacated and remanded that decision, holding that the FCC lacked statutory authority to *prohibit* carriers from filing tariffs.[26] The court, however, explicitly did "not reach the question whether the FCC's earlier permissive orders are invalid,"[27] and the permissive detariffing rules have remained a cornerstone of the Commission's regulatory regime since that time.

B. AT&T's Complaint

9. On August 7, 1989, AT&T filed a complaint against MCI alleging that MCI was violating Section 203 of the Communications Act by providing interstate telecommunications services to certain large business customers at rates and on terms and conditions not set forth in interstate tariffs.[28] AT&T claimed that, notwithstanding the Commission's permissive detariffing rules, the plain language of Section 203 requires all carriers to file tariffs. In support of this contention, AT&T relied principally upon the D.C. Circuit's 1985 *MCI v. FCC* decision vacating our mandatory detariffing requirement,[29] and on the Supreme

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[6] *Microwave Communications, Inc.*, 18 FCC 2d 953 (1969), *recon.*, 21 FCC 2d 190 (1970).

[7] *See, e.g., Specialized Common Carrier Services*, 29 FCC 2d 870 (1971), *recon.*, 31 FCC 2d 1106 (1971), *aff'd Washington Util. & Transp. Comm'n v. FCC*, 513 F.2d 1142 (9th Cir. 1975), *cert. denied*, 423 U.S. 836 (1975) ("specialized"/private line services); *Resale and Shared Use of Common Carrier Services*, 60 FCC 2d 261 (1976), *recon.*, 62 FCC 2d 588 (1977), *aff'd AT&T v. FCC*, 572 F.2d 17 (2d Cir. 1978), *cert. denied*, 439 U.S. 875 (1978) (*Resale Decision*).

[8] *MCI Telecomm. Corp. v. FCC*, 561 F.2d 365 (D.C. Cir. 1977).

[9] *MTS and WATS Market Structure*, 81 FCC 2d 177 (1980).

[10] *Competitive Carrier Notice*, 77 FCC 2d at 309.1

[11] *Id.* at 318-28; *First Report*, 85 FCC 2d at 20-22.

[12] *Competitive Carrier Notice*, 77 FCC 2d at 313-14.

[13] 47 U.S.C. § 201(b).

[14] *Id.* § 202(a); *see Competitive Carrier Notice*, 77 FCC 2d at 334-38.

[15] *Competitive Carrier Notice*, 77 FCC 2d at 313-14, 358-59.

[16] *First Report*, 85 FCC 2d at 30-40.

[17] *Competitive Carrier Notice*, 77 FCC 2d at 359-63; *see Competitive Carrier Further Notice*, 84 FCC 2d at 471-91.

[18] *Competitive Carrier Notice*, 77 FCC 2d at 363-68.

[19] *Id.*; *see Competitive Carrier Further Notice*, 84 FCC 2d at 463-70.

[20] 91 FCC 2d at 61-62 & n.7.

[21] *Id.* at 73.

[22] 47 U.S.C. § 208; *see Second Report*, 91 FCC 2d at 70-71. We also noted that we could "reimpos[e] ... the tariff filing requirement" at a later time in the "unlikely event" that the complaint process proved inadequate to that task. *Id.* at 70.

[23] *Fourth Report*, 95 FCC 2d at 578.

[24] *Fifth Report*, 98 FCC 2d at 1191.

[25] *Sixth Report*, 99 FCC 2d at 1020.

[26] *MCI v. FCC*, 765 F.2d at 1192.

[27] *Id.* at 1196.

[28] *See AT&T Communications v. MCI Telecommunications Corp.* (File No. E-89-297), 7 FCC Rcd 807 (1992), *pet. for review pending, AT&T v. FCC*, D.C. Circuit No. 92-1053.

[29] 765 F.2d at 1186.

Court's subsequent decision in *Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*,[30] addressing the "filed rate" doctrine under the Interstate Commerce Act (ICA).[31]

10. Recognizing that AT&T's complaint was, in effect, an attack on the legality of the *Competitive Carrier* permissive detariffing rules, with potentially important consequences for the entire telecommunications industry, we concluded that the issues AT&T raised should be addressed in a broader rulemaking proceeding rather than a two-party adjudication.[32] We initiated this rulemaking proceeding for that purpose.[33]

III. THE PLEADINGS

11. Of the more than forty parties that responded to the *Notice*, only six parties, led by AT&T, claim that the Commission was without authority to adopt its permissive detariffing rules.[34] These commenters stress that Section 203 of the Communications Act requires that every common carrier file with the Commission schedules showing all charges for itself and showing the classifications, practices, and regulations affecting such charges.[35] They claim that the "plain language of Section 203" means that the Commission "has no authority" to relieve any carriers, including nondominant carriers, of the obligation to file tariffs.[36] To bolster this construction, they cite various court decisions interpreting Section 203 and similar provisions of the Interstate Commerce Act, upon which the Communications Act provisions are generally patterned.[37]

12. Apart from the allegedly mandatory language of Section 203 itself, opponents of the Commission's current rules also claim that forbearance is inconsistent with the statutory scheme as a whole. In particular, they stress that the filing of tariffs provides the Communications Act's "central protection" against unjust, unreasonable, or unreasonably discriminatory rates and practices, and that the Commission may not dispense with that protection, even in a competitive environment.[38]

13. On the other hand, users, nondominant carriers, enhanced service providers, competitive access providers, some local exchange carriers, and others support our current rules. These parties generally dispute claims that the plain language of Section 203 forbids permissive detariffing. They state that the otherwise mandatory language in Section 203(a) that carriers "shall" file tariffs must be read in light of the equally explicit statement in Section 203(b)(2) that the Commission may "modify any requirement made by or under authority of this section," and the provision in Section 203(c) permitting a carrier to offer service without a tariff when "otherwise provided by or under authority of this Act."[39] These parties contend that this express power to modify the tariff filing requirements gives the FCC ample authority to adopt permissive detariffing.[40]

14. Supporters of permissive detariffing also point to repeated instances over the past decade in which Congress has demonstrated its awareness of the Commission's existing rules without attempting to overturn them.[41] They claim, in particular, that the recent enactment of the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA),[42] indicates Congressional acquiescence in our interpretation of our forbearance authority.[43] Noting that TOCSIA reimposes limited tariffing requirements on some nondominant carriers -- *i.e.*, operator service providers -- these commenters contend that the legislation was "clearly founded on a baseline of forbearance for other nondominant carriers' services.",[44] without disturbing that baseline.[45]

IV. DISCUSSION

15. Upon consideration of the record developed in this proceeding and our analysis of the law, we conclude that, in light of the language of Section 203, the Commission may lawfully permit nondominant carriers not to file tariffs. We also find that our conclusion in the *Competitive Carrier* decisions -- that permissive detariffing furthers the purposes of the Communications Act and meets the substantive requirements of Sections 201(b) and 202(a), which require that carriers' rates and practices be just, reasonable, and not unreasonably discriminatory -- is still valid given the growth and development of the interexchange market.[46] Consequently, we conclude that our forbearance rules that permit nondominant carriers not to file tariffs are both lawful and desirable as serving the public interest.

A. Permissive Detariffing Is Lawful Under the Communications Act

1. The "Plain Language" of the Act Allows Permissive Detariffing

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[30] 110 S.Ct. 2759 (1990).

[31] *See AT&T v. MCI*, 7 FCC Rcd at 808, para. 8.

[32] *AT&T v. MCI*, 7 FCC Rcd at 809, paras. 14-17.

[33] *Notice*, 7 FCC Rcd 804; *see also AT&T v. MCI*, 7 FCC Rcd at 809-10, paras. 17-18.

[34] These parties are AT&T, Alascom, Mobile Marine Radio, NYNEX, US West, and USTA.

[35] AT&T Comments at 3; *see also* Alascom comments at 3; NYNEX Comments at 6; US West comments at 4-5; USTA Reply Comments at 2-3.

[36] *See, e.g.*, AT&T Comments at 3; USTA Reply Comments at 2-3.

[37] *See, e.g.*, AT&T Comments at 4-7 (citing *MCI v. FCC*, 765 F.2d at 1186; *Maislin*, 110 S.Ct. at 2759; *Resale Decision*, 572 F.2d at 17); US West Comments at 5-7 (citing, in addition, *AT&T v. FCC*, 487 F.2d 865 (2d Cir. 1973) (*Special Permission Decision*)).

[38] *See, e.g.*, Mobile Marine Radio Comments at 3-6; USTA Reply Comments at 3-4.

[39] *See, e.g.*, Ad Hoc Comments at 7-10; FFMC Comments at 3-6; OCOM Comments at 9-12; MCI Comments at 6-7, 14-18.

[40] *See, e.g.*, Comptel Comments at 2-5, 7-9; MCI Comments at 8-14; CTIA Comments at 11-14.

[41] *See, e.g.*, MCI Comments at 25-45; Comptel Comments at 9-14; Comptel Reply Comments at 6-8.

[42] P.L. 101-435 (codified at 47 U.S.C. § 226 (West Supp. 1990)).

[43] *See, e.g.*, Ad Hoc Comments at 10-13; Comptel Comments at 9-11; FFMC Comments at 8-12; OCOM Comments at 5-7; IBM Comments at 4-6.

[44] *See, e.g.*, Ad Hoc Comments at 12 n.9; *see also* Comptel Comments at 9-12; FFMC Comments at 9-12; OCOM Comments at 5-7; MCI Comments at 34-35; IBM Comments at 5-6.

[45] *See* CTIA Comments at 15-16 (quoting 47 U.S.C. § 226(i) ("Nothing in this section shall be construed to alter the obligations, powers, or duties of common carriers or the Commission under the other sections of this Act.")).

[46] *See Second Report*, 91 FCC 2d at 71; *Competitive Carrier Further Notice*, 84 FCC 2d at 478-84.

16. Opponents of the Commission's permissive detariffing rules claim that the plain language of Section 203 requires tariff filings by all carriers and, thus, that the Commission lacks the power to relieve carriers of this requirement, regardless of whether tariffs otherwise serve the broader purposes of the Act.[47] Section 203 of the Communications Act provides, in pertinent part:

> (a) Every common carrier ... shall, within such reasonable time as the Commission shall designate, file with the Commission ... schedules showing all charges for itself ... and showing the classifications, practices, and regulations affecting such charges....
>
> (b)(2) The Commission may, in its discretion and for good cause shown, modify any requirement made by or under authority of this section either in particular instances or by general order applicable to special circumstances or conditions except that the Commission may not require the notice specified in paragraph (1) to be more than one hundred and twenty days.
>
> (c) No carrier, unless otherwise provided by or under authority of this Act, shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this Act and with the regulations made thereunder; and no carrier shall ... charge, demand, collect, or receive a greater or less or different compensation, for such communications, or for any service in connection therewith ... than the charges specified in the schedule then in effect....

17. Although the language of Section 203(a) and 203(c) states that "every" common carrier "shall" file tariffs and "no carrier ... shall engage or participate in such communication unless schedules have been filed and published...."[48] we find that other language within Section 203 limits those commands. Specifically, under Section 203(b)(2) the Commission is granted equally explicit authority to "modify *any requirement* " -- save one -- "made by or under authority of this section."[49] By its terms, Section 203(b)(2) limits the Commission's modification power in one circumstance only -- the FCC "may not" expand the 120-day period notice period for tariff filings prescribed in Section 203(b)(1). We believe that this specific, narrow limitation on the Commission's modification power strongly suggests that Congress did not otherwise intend to limit our authority, upon a proper public interest showing, to alter the requirements of Section 203. As we noted in *Competitive Carrier*, "[t]he words 'this section' clearly refer to the entire Section 203. When Congress wished to identify subsections, it used the word 'subsection' or 'paragraph' (followed by the letter or number) throughout the Act. *See, e.g.*, Sections 204, 213."[50] Thus, this modification power may be employed to alter the tariff filing requirements of both subsections (a) and (c) of Section 203.

18. Similarly, Section 203(c)'s prohibition against providing service without a tariff applies "*unless otherwise provided* by or *under authority of this Act.* "[51] In *Competitive Carrier*, we noted that Section 203(b)(2) may be construed as the authority referenced in 203(c).[52] We find no evidence that Congress intended that the Section 203(b) power to modify the requirements prescribed under Sections 203(a) and 203(c) be limited to particular requirements except the requirement explicitly mentioned (the 120-day notice period). We agree with those parties that assert that without specific limitations upon the Commission's authority, Congress intended for the FCC to have broad powers that could be exercised as the public interest requires.[53] Consequently, we find that Section 203 permits the FCC to exercise its authority under Section 203(b) in order to alter the tariff filing requirements of both subsections (a) and (c) of Section 203 as long as the FCC demonstrates that the goals of the Communications Act will be met and that the public interest would be served thereby.[54] We therefore reaffirm our conclusion in *Competitive Carrier* that these provisions defeat any claim that permissive detariffing is facially inconsistent with Section 203.[55]

19. Nor do the cases cited in support of the "plain language" construction alter our analysis. In *MCI v. FCC*, the court held that our Section 203(b) authority to "modify" tariffing requirements did not permit the Commission to convert the statutory command that carriers "*shall*" file tariffs into a requirement that carriers *shall not* do so. The

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[47] *See, e.g.*, AT&T Comments at 2-3; US West Comments at 6.

[48] *See MCI v. FCC*, 765 F.2d at 1191 ("'Shall' ... is the language of command, [and] ... [a]bsent a clearly expressed legislative intention to the contrary, courts ordinarily regard such statutory language as conclusive.") (internal quotations omitted).

[49] 47 U.S.C. § 203(b) (emphasis added).

[50] *Competitive Carrier Further Notice*, 84 FCC 2d at 480 n.69.

[51] 47 U.S.C. § 203(c) (emphasis added).

[52] *See* 84 FCC 2d at 481.

[53] *See, e.g.*, IBM Comments at 2; GTE Comments at 12; MCI Comments at 21.

[54] Moreover, in the absence of any explicit statutory prohibition, Section 4(i) of the Act, 47 U.S.C. § 154(i), provides additional authority for forbearance. *See, e.g., New England Tele. & Tel. v. FCC*, 826 F.2d 1101, 1108 (D.C. Cir. 1987), *cert. denied*, 109 S.Ct. 1942 (1989) ("section 4(i) is a 'necessary and proper clause' empowering the Commission to 'deal with the unforeseen ... to the extent necessary to regulate effectively those matters already within the boundaries'") (*quoting North American Telecomm. Ass'n v. FCC*, 772 F.2d 1282, 1292 (7th Cir. 1985)). It has long been recognized that the FCC, as the expert agency, has ample discretion in this dynamic field of communications. *See FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940) (the Communications Act is a "supple instrument for the exercise of discretion by the expert body which Congress has charged to carry out its legislative policy"); *Bell Telephone of Pennsylvania v. FCC*, 503 F.2d 1250, 1265 (3d Cir. 1974), *cert. denied*, 422 U.S. 1026 (1974). Absent explicit statutory direction, we have well-established discretion in choosing how to regulate. *FCC v. Pottsville Broadcasting Co.*, 309 U.S. at 138; *National Broadcasting Co. v. U.S.*, 319 U.S. 190, 218-19 (1943); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 172-73, 180-81 (1968); *CCIA v. FCC*, 693 F.2d at 212, including the discretion "not to exercise particular authority which ... has been granted." *NARUC v. FCC*, 533 F.2d 601, 620 n.113 (D.C. Cir. 1976). Because the Commission continues to ensure that the substantive requirements of the Act are met, it is free to exercise its discretion. *Cf. FPC v. Texaco*, 417 U.S. 380 (1974) (indirect regulation of small natural gas producers' rates is permissible so long as the FPC properly applies the Act's substantive standards to those rates).

[55] *Second Report*, 91 FCC 2d at 71; *see Competitive Carrier Further Notice*, 84 FCC 2d at 478-84.

petitioner in that case was a nondominant carrier that wished to file tariffs and that asserted, among other things, that the Commission's decision to prevent it from doing so would cause it harm.[56] The court stated that in such a context, Section 203(b) did not justify the "wholesale abandonment or elimination" of tariff filings.[57] The court, however, did not -- and, in light of other precedent permitting tariff forbearance in limited contexts,[58] could not -- find that Section 203 facially precluded permissive detariffing. Indeed, the court in *MCI v. FCC* noted that our permissive detariffing rules were "fundamentally" different from those it struck down, and it expressly did "not reach the question whether [those] ... permissive orders are invalid."[59]

20. Similarly, the Supreme Court's decision in *Maislin* also is not dispositive here.[60] The Court held in that case that the Interstate Commerce Commission (ICC) could not "relieve a shipper of the obligation of paying the filed rate when the shipper and carrier ha[d] privately negotiated a lower rate."[61] That core holding simply reaffirms the "filed rate doctrine," which courts previously have applied in Communications Act cases as well.[62] By contrast, our forbearance rules allowing permissive detariffing are consistent with that long-established doctrine.[63]

21. Moreover, we note that the specific motor common carrier tariff filing provisions at issue in *Maislin* facially differ in important respects from Section 203 of the Communications Act. In particular, the motor carrier analogues to Sections 203(a) and (c) are contained in separate sections of the ICA -- 49 U.S.C. §§ 10762(a)(1) and 10761(a), respectively. The motor carrier analog to Section 203(b), which provides modification authority, appears in ICA Section 10762(d)(1) and expressly applies only to the "requirements of this section [10762]." Thus, on its face, the ICC's power to modify tariff requirements does not apply to Section 10761(a)'s command (akin to that in Section 203(c)) that motor carriers "shall provide ... transportation only if the rate for the transportation or service is contained in a tariff...." As set forth above, the modification authority contained in Section 203(b) applies, by its terms, to both the obligation to file tariffs (Section 203(a)) and the prohibition against untariffed offerings (Section 203(c)).

22. In addition, although Section 10761(a)'s requirement (like that in Section 203(c)) is applicable "[e]xcept as provided in this subtitle," the *Maislin* Court construed recent statutory changes to the ICA as evidence of Congressional intent to limit any exception authority. Specifically, the Court noted that Congress had amended the ICA to exempt *contract* carriers from the requirements of Section 10761(a),[64] thus "demonstrating that Congress is aware of the [Section 10761(a)] requirement and has deliberately chosen not to disturb it with respect to motor *common* carriers."[65] Not only is there a lack of similar corroborating legislative history limiting the FCC's exception authority under Section 203(c), but the legislative history of recent legislation involving the tariff requirements of operator service providers supports the FCC's interpretation of Section 203.[66]

23. Furthermore, we stress that courts have recognized that while there are "similarities" between the Interstate Commerce Act (ICA) and the Communications Act, the FCC should not be "restrict[ed] ... to a course of action that has been dictated by the requirements of the transportation industry."[67] For instance, in holding that the FCC's authority to modify tariff notice periods was greater than that accorded the ICC under former Section 6(3) of the ICA, the Second Circuit stressed that Section 203 of the Communications Act, in particular, is "not ... a carbon copy of the Interstate Commerce Act."[68]

24. We also find that the *Special Permission Decision*, in which the Second Circuit stated that Section 203(b) authorized modifications only "as to the form of, and information contained in, tariffs," does not alter our analysis.[69] Not only was such language *dicta*, but like the mandatory detariffing at issue in *MCI v. FCC*, and unlike the permissive detariffing rules at issue here, the "special permission" requirement in that case had the effect of *prohibiting* AT&T from filing tariffs.[70] The court there explained that there had been "[n]othing in Section 203(b) to justify such procedure ... [which] was in effect a rate "prescription" and inconsistent with 47 U.S.C. § 205, which authorizes rate prescriptions only after a full hearing and specific findings."[71] Since Section 203(b), by its terms, grants the Commission authority to modify only the requirements of Section 203 itself, the court understandably found that it did not justify a procedure that conflicted with another section of the Act.

25. Similarly, we do not find the Second Circuit's *Resale Decision* controlling. In that case, the court upheld the Commission's discretion in its administration and interpretation of the Communications Act.[72] While the FCC at that time determined not to forbear completely from Title II regulation of resale carriers, it noted in its order on review that "[l]ater experience may show that the public interest would be served by deregulation of resellers. If so,

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[56] *See MCI v. FCC*, D.C. Circuit No. 85-1030, Brief of MCI, filed April 1, 1985, at 59-60; *id.*, Reply Brief of MCI, filed May 15, 1985, at 26-27. In fact, the court in *MCI v. FCC* suggested that the *only* statutory interest properly raised in that case was the interest of the nondominant carrier in being *permitted* to file tariffs. The court noted that "[o]nly when the Commission turned permission into command [in the *Sixth Report*] did MCI's aggrievement become evident and plainly adequate to support a challenge" to the Commission's action. *MCI v. FCC*, 765 F.2d at 1190.

[57] 765 F.2d at 1192.

[58] *See infra* Section IV.A.2.

[59] *MCI v. FCC*, 765 F.2d at 1190, 1196. *See Richman Bros. Records v. U.S. Sprint Communications Co.*, 953 F.2d 1431, 1436 (3rd Cir. 1991) (*MCI v. FCC* did not address lawfulness of permissive detariffing).

[60] *Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 110 S. Ct. 2759 (1990).

[61] 110 S.Ct. at 2762.

[62] *See, e.g., American Broadcasting Cos. v. FCC*, 643 F.2d 818, 819 (D.C. Cir. 1980).

[63] *See Competitive Carrier Further Notice*, 84 FCC 2d at 483-84; *Certified Collateral Corp. v. Allnet Communications Servs., Inc.*, 2 FCC Rcd 2171, 2174 n.13 (Com. Car. Bur. 1987).

[64] *See* 49 U.S.C. § 10761(b).

[65] 110 S. Ct. at 2771 (emphasis in original).

[66] *See infra* paragraphs 30-34.

[67] *General Telephone Co. of the Southwest v. U.S.*, 449 F.2d 846, 856 (5th Cir. 1971).

[68] *AT&T v. FCC*, 503 F.2d 612, 616, 617 (2d Cir. 1974).

[69] 487 F.2d 865, 879 (2d Cir. 1973).

[70] *See* 503 F.2d at 617.

[71] *Id.*

[72] *Resale Decision*, 572 F.2d at 25.

to the extent that the law allows it, we will review the matter and act accordingly."[73] The Commission has subsequently reconsidered the issue of forbearance in its *Competitive Carrier* decision,[74] and concluded that permissive detariffing, combined with enforcement of Title II substantive standards through the complaint process, was lawful and in the public interest.[75] Particularly because statutes governing administrative action may be susceptible of more than one valid interpretation,[76] the Second Circuit's decision to uphold the Commission's own interpretation of its authority in the different context of the *Resale Decision* provides no support for a facial challenge to our permissive detariffing rules here.

26. Significantly, the opponents' absolutist challenge premised upon the alleged "plain language" of Section 203 proves too much. If there were any merit to their argument, the Commission presumably would be without authority to relieve carriers of the obligation to file tariffs for their interstate common carrier services under *any* circumstances. That clearly is not the case, however. Courts on several occasions have recognized our power to forbear from requiring the filing of federal tariffs for interstate common carrier services in other contexts.

27. For example, in *Diamond International Corp. v. FCC*,[77] the court upheld the Commission's refusal to disturb the charges for certain *inter* state common carrier services that New York Telephone Company had included in its *intra* state, rather than interstate, tariff. Although the complaining customer in that case argued that Section 203 of the Communications Act required the disputed charges to be included in interstate tariffs,[78] the court upheld the Commission's decision to defer to state regulation of the service in the absence of any unreasonable burden on interstate communications.[79] Similarly, in *CCIA v. FCC*,[80] the D.C. Circuit upheld the Commission's decision to forbear from all Title II regulation --including tariff regulation -- of certain enhanced services and customer premises equipment that otherwise would be subject to such common carrier regulation, where the Commission found that the "difficulty in isolating activities subject to Title II regulation outweighs the benefits to be gained by that regulation."[81] In fact, the court stated: "To the extent that certain enhanced services could lawfully be regulated under Title II once they were identified as common carrier services, we sanction the Commission'sforbearance from Title II regulation."[82] We believe that these cases indicate that Section 203 does confer some discretion upon the FCC in determining how to apply that section so that the public interest is served.[83]

2. Congress Has Acquiesced In Permissive Detariffing.

28. As demonstrated above, we believe that Section 203 can be read to permit the FCC to adopt forbearance rules when the public interest so requires. We recognize, however, the contentions of some of the parties that Congress could not have foreseen the development of nondominant carriers and thus did not address the precise issue.[84] Given that Section 203 was enacted long before a competitive long distance market was even foreseeable, we agree that it is reasonable to conclude that Congress lacked any specific intention regarding the regulatory treatment of nondominant carriers. Section 203 tariff filing requirements were enacted in the context of a monopoly telephone market in order to protect the public from the unlawful rates and practices of the monopoly carrier that exercised unchecked market power. There is no indication that Congress ever considered at the time it enacted Section 203 whether carriers that lacked such market power should also be subject to the full tariff filing requirements of Sections 203(a) and 203(c) if it did not serve the public interest. In tailoring our tariffing policies to the onset of competition in telecommunications, therefore, we have addressed, as we may, circumstances not dealt with directly in the organic statute.[85]

29. Nevertheless, we find that since the time it enacted Section 203, Congress has acquiesced in the FCC's present forbearance rules. We believe these manifestations of legislative intent provide additional support for our conclusion that we have authority to adopt permissive detariffing rules.

30. Most significantly, in its recent enactment of the TOCSIA, Congress has demonstrated its awareness of the Commission's forbearance policy and made no attempt to disturb it.[86] That amendment to the Communications Act requires, *inter alia*, that operator service providers (OSPs), which are common carriers, file "informational tariffs."[87] TOCSIA also authorizes the Commission to waive the filing requirement after four years if it finds that consumers

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[73] *Resale and Shared Use of Common Carrier Services*, 60 FCC 2d 261, 308 (1976).

[74] *See Competitive Carrier Notice*, 77 FCC 2d at 360-61.

[75] *Second Report*, 91 FCC 2d at 70-71, 73. Indeed, as the D.C. Circuit held in *Geller v. FCC*, 610 F.2d 973, 978-81 (D.C. Cir. 1979), our "public interest" mandate requires us to reexamine and adjust our regulations -- as we did in *Competitive Carrier* -- in light of changed circumstances. As stated in the *Fourth Report*, the Commission generally has the "duty to determine that its rules promote the public interest when applied to particular carriers or applicants, and to refrain from imposing and to remove unnecessary regulatory burdens on carriers." *Fourth Report*, 95 FCC 2d at 580.

[76] *See, e.g., Clark-Cowlitz Joint Operating Agency v. FERC*, 826 F.2d 1074, 1079-80 (D.C. Cir. 1987) (en banc), *cert. denied*, 485 U.S. 913 (1988); *American Federation of Government Employees v. FLRA*, 777 F.2d 751, 759 (D.C. Cir. 1985).

[77] 627 F.2d 489 (D.C. Cir. 1980).

[78] *Id.* at 490.

[79] *Id.* at 493. *See also New York Telephone Company v. FCC*, 631 F.2d 1059, 1067 (2d Cir. 1980) (noting that Commission may permit state, rather than federal, tariffing of interstate component of mixed interstate/intrastate service if state regulation does not discriminate against interstate customers).

[80] *Computer and Communications Industry Association v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983) (*CCIA v. FCC*).

[81] *CCIA v. FCC*, 693 F.2d at 211.

[82] *Id.* at 210. We recognize that the Commission asserted, as the primary ground for its decision not to apply Title II regulation to enhanced services and CPE, that the offerings were not "common carrier" services at all. The court explicitly held, however, that the Commission's action was "sustainable on either of the grounds asserted by the Commission." *Id.* at 209.

[83] For other instances in which the Commission declined in its discretion from regulating facilities and services, see our orders cited in the *Second Report*, 91 FCC 2d at 66-67.

[84] *See, e.g.*, CTIA Comments at 18 n.16; OCOM Comments at 16-17.

[85] *See U.S. v. Southwestern Cable Co.*, 392 U.S. at 172-73; *NARUC v. FCC*, 525 F.2d 630, 638 n.37 (D.C. Cir. 1976), *cert. denied*, 425 U.S. 992 (1976).

[86] 47 U.S.C. § 226.

[87] *Id.* § 226(h).

are benefitting from competition and that continued tariff filings by such carriers are not required to meet statutory objectives.[88]

31. TOCSIA's legislative history makes clear that Congress was aware of the Commission's permissive detariffing rules with respect to nondominant carriers, and that it statutorily modified our authority to forego requiring tariffs for a small subset of common carrier services -- involving OSPs -- while leaving the existing regulatory baseline intact. First, the committee reports specifically note that many OSPs were considered to be "nondominant" under our *Competitive Carrier* rules and that we had "chosen to 'forbear'" from full Title II regulation of those carriers.[89]

32. Second, the required informational tariffs substantially overlap in scope and purpose the tariff filings provided for in Section 203. Section 226(h)(1)(A) provides that OSPs "shall file ... an informational tariff specifying rates, terms, and conditions" for operator services.[90] Congress explained that "[t]his tariff filing requirement is intended to allow members of the public and the FCC to review and, if necessary, investigate these carriers' rates."[91] This informational tariff requirement would be mere surplusage if Congress believed that the FCC had incorrectly interpreted Section 203 as allowing permissive detariffing.[92] In this regard, we find it noteworthy that virtually at the same time Congress enacted TOCSIA, it also amended Section 203 itself.[93] Although Congress was well aware of the Commission's permissive detariffing rules at that time, as evidenced by the contemporaneous TOCSIA legislative history, Congress made no attempt to disturb the Commission's interpretation of its authority under Section 203.

33. Finally, in permitting waiver of the informational tariffing requirement after four years, Congress in effect recognized and approved the rationale upon which the Commission based its forbearance regime generally. Congress noted that "[i]f the other provisions of this bill have a positive effect in promoting competitive rates and services, ... the need for these tariff[] filings diminishes."[94] Under these circumstances, we believe that it is fair to assume that Congress has, at the very least, acquiesced in the Commission's construction of its authority to forbear from requiring nondominant carriers to file tariffs under Section 203 of the Communications Act.

34. Therefore, while we recognize that courts may be reluctant to infer Congressional approval of an agency's interpretation of its organic statute based solely upon Congressional inaction,[95] Congress' record over the past decade since we adopted our permissive detariffing rules displays far more than unknowing silence with respect to those rules. Congress has repeatedly acted in the telecommunications area over the past decade that the Commission's policy was in effect and failed to alter or repeal this fundamental policy.[96] Thus, we conclude that the enactment of TOCSIA, which is predicated upon a baseline of forbearance, as well as the failure of Congress to express its reservations about our forbearance rules, supports the interpretation of our authority that we adopted in *Competitive Carrier*.[97]

B. Permissive Detariffing Advances the Purposes of the Communications Act

35. On the basis of our thorough review of permissive detariffing in the *Competitive Carrier* decisions and the record in this proceeding, we continue to believe that our forbearance policy furthers the statutory purposes of the Communications Act. The fundamental statutory purpose contained in Section 1 of the Act, is "to make available ... to all people of the United States a rapid, efficient, Nationwide, and world-wide wire and radio communications service with adequate facilities at reasonable charges...."[98] As the Commission recognized in *Competitive Carrier*, the tariff filing procedures set forth in Section 203 of the Communications Act were designed principally to facilitate enforcement of the substantive requirements, contained in Sections 201(b) and 202(a), that carriers' rates and practices

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[88] *See* 47 U.S.C. § 226(h)(1)(B); 47 U.S.C. §§ 226(d)(1)(A) & (B); S. Rept. No. 101-439, Senate Committee On Commerce, Science, and Transportation, 101st Cong., 2d Sess., at 23 (August 30, 1990).

[89] S. Rept. No. 101-439, Senate Committee On Commerce Science, and Transportation, 101st Cong., 2d Sess., at 3 & n.10 (August 30, 1990); *see also* H. Rept. No. 101-213, House Committee on Energy and Commerce, 101st Cong., 1st Sess., at 3, 5-6 (August 3, 1989).

[90] *Cf.* 47 U.S.C. § 203(a) (requiring that tariffs include "charges" and "classifications, practices, and regulations affecting such charges").

[91] S. Rept. No. 101-439, at 23.

[92] Although the informational tariffs required by Section 226(h) must include certain data -- *e.g.*, "reasonable estimates of the amount of traffic priced at each rate" -- that are not specifically required by Section 203, Congress also made clear that "these informational tariffs are not expected to contain the same detailed cost justification material that typically accompanies the tariffs filed by dominant carriers." S. Rept. 101-439, at 9. *See also* H. Rept. No. 101-213, at 14. Thus, we reject AT&T's contention that the informational tariff filing requirement in Section 226(h) was intended as a *supplemental* requirement (in addition to Section 203 requirements) for OSPs, rather than a substitute for the Section 203 filings that Congress recognized we could excuse. *See* AT&T Reply Comments at 15 & n.*.

[93] *See* Pub. Law 101-396 (approved September 28, 1990) (increasing the notice period (from 90 to 120 days) for tariff filings); *see also* H. Rept. No. 101-316, House Committee on Energy and Commerce, 101st Cong., 1st Sess., at 7-8 (Oct. 27, 1989) (expressing Congress' sentiment that the increased notice period should be used only for local exchange carriers' annual access tariff filings).

[94] S. Rept. No. 101-439, at 23.

[95] *See, e.g., Demarest v. Manspeaker*, 111 S.Ct. 599, 603-04 (1991); *Patterson v. McLean Credit Union*, 491 U.S. 164, 175 n.1 (1989); *Ashton v. Pierce*, 716 F.2d 56, 63 (D.C. Cir. 1983).

[96] *See, e.g.*, H.R. Rep. No. 96-1252, 96th Cong., 2d Sess., pt. 2 at 1 (1980); H.R. 5158, 97th Cong., 2d Sess. (1981) (Telecommunications Act of 1982); H.R. Conf. Rpt. No. 765, 97th Cong., 2d Sess. 56 (1982); FCC Authorization Act of 1988, Pub. L. No. 100-594, 102 Stat. 3021 (1988); H.R. Rep. No. 101-213, 101st Cong., 1st Sess. 3 (1989). *See also* MCI Comments at 25-35; CompTel Comments at 9-13.

[97] Courts have often held that where Congress is aware of an agency's interpretation and has not sought to alter it despite making other amendments to the statute, it can be presumed that legislative intent has been correctly discerned. *See, e.g., United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 132, 137 (1985); *Bob Jones University v. U.S.*, 461 U.S. 574, 599-602 (1983); *New Haven Board of Educations v. Bell*, 456 U.S. 512, 533-35 (1982); *United Statesh) v. Rutherford*, 442 U.S. 544, 554 & n.10 (1979); *Saxbe v. Bustos*, 419 U.S. 65, 74 (1974); *Zemel v. Rusk*, 381 U.S. 1, 11-12 (1965).

[98] 47 U.S.C. § 151; *see Second Report*, 91 FCC 2d at 64.

be just, reasonable, and not unreasonably discriminatory.[99] In implementing permissive detariffing, we sought to adapt our regulation of telecommunications common carriers to the changed circumstances of competition and to develop a regulatory approach that furthers the purposes of the Act while fostering innovation and the efficient development of the telecommunications industry.[100] We did not discard the standards of Sections 201(b) or 202(a), but rather committed to enforcing them through the complaint process in the event that "irrational carrier conduct or aberrations" occur.[101]

36. In the *Competitive Carrier* decisions, we further concluded that mandatory tariff regulation of nondominant carriers was in fact at odds with the fundamental statutory purpose set forth in Section 1 of the Act because it inhibits price competition, service innovation, entry into the market, and the ability of firms to respond quickly to market trends.[102] We found that in the case of nondominant carriers, which by definition lack substantial market power, such barriers and burdens impair competition by delaying or deterring carriers in their service and rate offerings and causing them to bear additional costs. We held that, consequently, the users would pay higher rates and that the services available to meet the needs of users would be limited.[103] Moreover,we additionally held that by allowing permissive detariffing, the risk of collusive pricing would be diminished.[104]

37. We conclude that mandatory tariff filing requirements continue to be unnecessary for nondominant interexchange carriers (IXCs) because they continue to lack market power. If such carriers sought to charge unreasonable rates in violation of Section 201(b) or to discriminate unreasonably in violation of Section 202(a), customers would simply move to other carriers.[105] We agree with those parties stating that the competitive forces in the marketplace serve to ensure, in the first instance, carrier compliance with the obligations imposed by Sections 201(b) and 202(a).[106] While some commenters argue that the FCC's forbearance policy alters the statutory scheme envisioned by Congress by making it difficult or impossible to ensure that nondominant carriers comply with the Act's substantive requirements that rates be just, reasonable, and not unreasonably discriminatory, we disagree given the competitive evolution of the industry.[107] Further, we note that the complaint process under Section 208 remains available in the event allegations of unjust or unreasonable rates are made.[108] Significantly, we emphasize that if competitive forces fail to ensure carrier compliance with the obligations imposed by Sections 201(b) and 202(a), we will rely not only upon our complaint process but also upon our ability to reimpose tariff-filing requirements as necessary to protect the public from unjust or unreasonable rates charged by carriers operating under permissive detariffing.[109]

38. We also continue to believe that altering our forbearance policy would frustrate the overriding goals of the Act.[110] We agree with those commenters that argue that the purposes of the Act would be thwarted if the Commission were to reimpose full tariff regulations on competitive, nondominant carriers that provide services in a working market.[111] We agree with those parties that assert that the forbearance policy developed in the *Competitive Carrier* decisions has played a major role in the rapid development of competition and in the consumer benefits that have resulted.[112] Moreover, the record here confirms that but for permissive detariffing, at least some of the current telecommunications market participants likely would not have entered into the competitive fray at all.[113]

39. We conclude that permissive detariffing has proven to be a success over the years, as evidenced by the robust competition in the interexchange market and the increased choices for customers with respect to carriers and prices.[114] The decade of actual experience under permissive detariffing provides further confirmation of the success of that approach in furthering the statutory goals of the Commu-

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[99] *Second Report*, 91 FCC 2d at 71; *Competitive Carrier Further Notice*, 84 FCC 2d at 483.

[100] *Second Report*, 91 FCC 2d at 60, 62.

[101] *Id.* at 70; *see* 47 U.S.C. § 208.

[102] *Second Report*, 91 FCC 2d at 62, 65, 71; *Competitive Carrier Further Notice*, 84 FCC 2d at 453, 456, 471, 479.

[103] *Fourth Report*, 95 FCC 2d at 580.

[104] *Id.* at 556.

[105] *See First Report*, 85 FCC 2d at 31; *Second Report*, 91 FCC 2d at 69.

[106] *See, e.g.*, RCI Long Distance Comments at 2 (market forces are sufficient to guarantee that rates and practices will be reasonable, because dissatisfied customers can simply and inexpensively pick another carrier); OCOM Comments at 17-18 (the lack of market power by [nondominant carriers] assures that the public will be afforded the just and reasonable rates required under ... the Act by ensuring a competitive environment in which pricing is determined by market forces); *see also Second Report*, 91 FCC 2d at 61; *Further Notice*, 84 FCC 2d at 495.

[107] *See, e.g.*, Mobile Marine Radio Comments at 3-6; USTA Reply Comments at 3-4.

[108] 47 U.S.C. § 208. Significantly, under our rules, any party filing a complaint under Section 208 is entitled to discovery in order to ascertain pertinent information regarding carriers' rates and practices. *See* 47 C.F.R. §§ 1.729-1.730 (1992).

[109] *See Fourth Report*, 95 FCC 2d at 579-80.

[110] *See, e.g.*, NTCA Comments at 2-3; GTE Comments at 9-10; *see also Second Report*, 91 FCC 2d at 60-61; *Fourth Report*, 95 FCC 2d at 555. We concluded in the *Fourth Report* that applying Section 203(a) requirements to nondominant carriers thwarts the goals of the Act by fostering inefficiencies and imposing costs on carriers and consumers without offsetting benefits to consumers. *Fourth Report*, 95 FCC 2d at 555, 557.

[111] *See, e.g.*, RCI Long Distance Comments at 1-2 (tariff process provides a disincentive for innovation and inhibits price competition); *see also* OCOM Comments at 1-2; TCA Comments at 5.

[112] *See, e.g.*, Comptel Comments at 5-6; ACC Long Distance Comments at 4; Ad Hoc Comments at 3-5; Commonwealth Long Distance Comments at 1-3, 5-6; ICA Comments at 2; OCOM Comments at 1-2; RCI Long Distance Comments at 1-2.

[113] *See, e.g.*, Interexchange Resellers Association Comments at 1-2; LOCATE Comments at 7-8; TCA Comments at 5-6; RCI Long Distance (new IXCs can enter niche markets for interstate services without costly filings and lengthy regulatory delays); OCOM Comments at 8 (many of the smaller carriers today would not be here now or be able to continue offering competitive services under a more burdensome regulatory structure).

[114] Based upon the past decade of growth and competition in the interexchange market, we disagree with those commenters that contend that the current application of the forbearance doctrine creates artificial competition because some but not all participants must file tariffs with cost support. *See, e.g.*, PacTel Comments at 2; NYNEX Comments at 13; Alascom Comments at 4-5.

nications Act.[115] In 1982, approximately a dozen long distance carriers operated within the United States.[116] By March 1992, there were an estimated 482 such carriers purchasing switched access from local exchange carriers.[117] Given this evidence, we believe it is clear that our permissive detariffing rules have allowed for new entrants into the interexchange market and have given consumers more flexibility with respect to the price of services, type of services, and selection of carriers.[118] To adopt a different course of action at this time would only frustrate the success of our current policy.

40. Moreover, since 1984, overall interstate calling has grown at an annual rate of about 12%, with carriers other than AT&T posting an average annual growth rate in excess of 25%.[119] During the same period between January 1984 and January 1992, AT&T's share in terms of minutes of the interstate market declined from over 80% to just more than 60%,[120] while its rates for directly dialed interstate have also fallen substantially.[121] Several of AT&T's nondominant competitors have engaged in intensive capital investment programs to develop state-of-the-art fiber optic networks, and AT&T now has less than half of the long distance industry's fiber optic route miles.[122] Thus, in light of the successful practical experience with permissive detariffing, we believe not only that this policy advances the broad purposes of the Communications Act and is therefore in the public interest, but also that it would be unreasonable to disturb our current rules in the absence of Congressional or judicial commands.

C. Additional Matters

41. In its complaint against MCI that precipitated this rulemaking, AT&T claimed that the permissive detariffing rules we adopted in *Competitive Carrier* were not substantive rules that relieved nondominant carriers of the obligation to file tariffs, but rather an exercise of the Commission's discretion not to enforce the requirements Section 203. In our order resolving that complaint we explained that our permissive detariffing policy was, in fact, a binding substantive rule that removed the tariff filing requirement from nondominant carriers.[123] Having decided here to reaffirm our uncodified forbearance rule, and in order to remove any possible ambiguity on that issue, we codify the permissive detariffing rule.[124]

V. FINAL REGULATORY FLEXIBILITY ANALYSIS

42. *Need and purpose of this action.* This rulemaking proceeding was initiated to review the continuing lawfulness of the Commission's existing permissive detariffing rules in light of a complaint filed by AT&T alleging, in effect, that these rules violate the Communications Act. This order sustains those rules as being consistent with the Act and the public interest.

43. *Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Act Analysis.* The Initial Regulatory Flexibility Analysis stated that any change in existing rules could have a significant impact on a broad range of telecommunications common carriers. We did not receive any comments that specifically addressed our Initial Regulatory Flexibility Analysis.

44. *Significant alternatives considered and rejected.* The *Notice* did not propose new rules or alternative policies, but sought comment on the lawfulness of our existing permissive detariffing rules and on how they should be changed in the event they are found unlawful. This item reaffirms and codifies our existing rules which minimize regulatory burdens on nondominant carriers.

VI. ORDERING CLAUSES

45. Accordingly, IT IS ORDERED that pursuant to authority contained in Sections 1, 4, and 201-05 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154 and 201-05, Part 61 of the Commission's Rules, 47 C.F.R. Part 61, IS AMENDED as set forth in Appendix B.

46. IT IS FURTHER ORDERED, that the policies and rules set forth herein ARE ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

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[115] Indeed, in the *Interexchange Order*, we concluded based upon the extensive record in that proceeding, that competition had flourished under the market analysis set forth in the *Competitive Carrier* decisions. *See* Competition in the Interexchange Marketplace, Report and Order, 6 FCC Rcd 5880, 5881-82 (*Interexchange Order*) . *Cf. American Airlines, Inc. v. CAB*, 359 F.2d 624, 633-34 (D.C. Cir. 1966), *cert. denied*, 385 U.S. 843 (1966).

[116] *See Trends in Telephone Service*, Industry Analysis Division, Common Carrier Bureau, FCC, at 30 & Table 19 (February 1992).

[117] *Summary of Long Distance Carriers*, Industry Analysis Division, FCC, at 6 & Table 1 (June 16, 1992).

[118] While AT&T states that the Commission already has developed streamlined tariffing procedures in the *First Report* that would not overburden nondominant IXCs and that fully complies with Section 203, we believe that the public interest is better served by allowing permissive detariffing of those carriers that lack substantial market power. AT&T Comments at 8. As we stressed in the *Fourth Report*, forbearance "eliminates a potential vehicle for collusive conduct and facilitates price discounting" and, therefore, serves the public interest better than streamlined regulation. *Fourth Report*, 95 FCC 2d at 556 n.3.

[119] *Trends in Telephone Service*, Industry Analysis Division, Common Carrier Bureau, FCC, at 34 (September 1992).

[120] *Summary of Long Distance Carriers*, Industry Analysis Division, FCC, at 4 & Table 3 (October 1992). With respect to "high end" business services, AT&T's current market share appears closer to 50%. *See Interexchange Order*, 6 FCC Rcd at 5890.

[121] *Trends in Telephone Service*, Industry Analysis Division, Common Carrier Bureau, FCC, at 13 (February 1992).

[122] *See Competition in the Interstate Interexchange Marketplace*, Notice or Proposed Rulemaking, 5 FCC Rcd 2627, 2633-34 (1990).

[123] *AT&T v. MCI*, 7 FCC Rcd at 809, para. 13.

[124] *See* Appendix B.

APPENDIX A: PARTIES FILING COMMENTS

Comments

ACC Long Distance Corp. (ACC)

Ad Hoc Telecommunications Users Committee (Ad Hoc)

Alascom, Inc. (Alascom)

American Telephone and Telegraph Company (AT&T)

Association for Local Telecommunications Services

Automated Communications, Inc., *et al.*

Cellular Telecommunications Industry Association

Commonwealth Long Distance Company

Communications Transmission, Inc.

Competitive Telecommunications Association

Fairchild Communications Services Company

First Financial Management Corporation (FFMC)

General Communication, Inc.

GTE Service Corporation (GTE)

Interexchange Resellers Association

International Business Machines Corporation (IBM)

International Communications Association (ICA)

KIN Network Access Division

LCI International Worldwide Telecommunications (LCI)

Local Area Telecommunications, Inc.

MCI Telecommunications Corp. (MCI)

Metropolitan Fiber Systems, Inc. (MFS)

Mobile Marine Radio, Inc.

National Telephone Cooperative Association (NTCA)

NYNEX Telephone Companies (NYNEX)

OCOM Corporation (OCOM)

Pacific Telesis Group (PacTel)

RCI Long Distance, Inc. (RCI Long Distance)

Southwestern Bell Corporation

Sprint Communications Company L.P.

Tele-Communications Association (TCA)

Telecommunications Marketing Association

Telocator

US West Communications, Inc. (US West)

Williams Telecommunications Group, Inc.

Reply Comments

Ad Hoc Telecommunications Users Committee (Ad Hoc)

Aeronautical Radio, Inc.

Alascom, Inc. (Alascom)

American Telephone and Telegraph Company (AT&T)

Ameritech Operating Companies (Ameritech)

Centel Cellular Corp.

Communications Transmission, Inc.

Competitive Telecommunications Association

Custom Network Services

First Financial Management Corporation (FFMC)

General Communication, Inc.

GTE Service Corporation (GTE)h)|Information Technology

Association of America (ITAA)

International Communications Association (ICA)

LCI International Worldwide Telecommunications (LCI)

Local Area Telecommunications, Inc.

McCaw Cellular Communications

MCI Telecommunications Corp. (MCI)

Metropolitan Fiber Systems, Inc. (MFS)

National Telecommunications and Information Association (NTIA)

NYNEX Telephone Companies (NYNEX)

OCOM Corporation (OCOM)

Southwestern Bell Corporation

Sprint Communications Company L.P.

Telecommunications Marketing Association

Telocator

United States Telephone Association (USTA)

US West Communications, Inc. (US West)

Williams Telecommunications Group, Inc.

APPENDIX B: RULE CHANGES

Part 61 of Title 47 of the Code of Federal Regulations is amended as follows:

1.The authority citation for Part 61 continues to read:

AUTHORITY: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. § 203.

2. Part 61 is amended by adding Section 61.50 as follows:

§61.50 Carriers Subject to Forbearance

Notwithstanding the rules set forth herein, no domestic carrier classified as nondominant that is subject to forbearance is required to file tariffs.

Before the
Federal Communications Commission
Washington, D.C. 20554

Application of

D & D BROADCASTING, INC.
Assignor

and File Nos. BAL-920616AE
BALH-920616EB

TRIBUNE DENVER RADIO, INC.
Assignee

For Assignment of Licenses of
KEZW(AM), Aurora, Colorado and
KOSI-FM, Denver, Colorado

MEMORANDUM OPINION AND ORDER

Adopted: November 25, 1992; Released: November 25, 1992

By the Commission:

1. The Commission has before it for consideration the above-captioned application for consent to assign the licenses of KEZW(AM), Aurora, Colorado and KOSI-FM, Denver, Colorado from D & D Broadcasting, Inc. ("D & D") to Tribune Denver Radio, Inc. ("Tribune Denver"). Tribune Denver, the proposed assignee, is a wholly owned subsidiary of the Tribune Broadcasting Company ("Tribune"). Another wholly owned subsidiary of Tribune, KWGN Inc., ("KWGN") is the licensee of VHF television station KWGN(TV), Denver, Colorado. Because the Grade A contour of KWGN(TV) encompasses the entire communities of both Aurora and Denver, Colorado, a grant of the assignment application would result in Tribune, through its subsidiaries, owning attributable interests in a television station and an AM and FM radio station in the same market in violation of 47 C.F.R. § 73.3555(b), the Commission's one-to-a-market rule.[1] Tribune Denver thus requests a waiver of the rule in connection with the proposed assignment. The waiver request is opposed by Newsweb Corporation ("Newsweb"), the permittee of unbuilt station KTVJ(TV), Boulder, Colorado. Newsweb filed a petition to deny the captioned assignment application, contending that a waiver of the one-to-a-market rule in this case would disserve the Commission's goals of promoting competition and diversity because KWGN has already engaged in anti-competitive behavior by denying KTVJ(TV) access to space on KWGN(TV)'s transmitting towers, in violation of 47 C.F.R. § 73.635, the Commission's unique antenna site rule applicable to television licensees.[2]

2. Tribune Denver opposes Newsweb's petition. Tribune Denver argues that Newsweb does not have standing to petition against the captioned application, which seeks Commission consent for the assignment of radio licenses, in order to pursue its dispute concerning access to television towers licensed to KWGN(TV). Newsweb, however, claims in its reply that it is a competitor in the same market as KEZW(AM)/KOSI-FM and KWGN(TV) and that KTVJ(TV) will suffer economic injury if the Commission approves the subject applications with a waiver of the one-to-a-market rule. In this regard, Newsweb argues that if the proposed AM-FM-TV combination is approved, it will lose advertising revenue based on additional competition which will result from Tribune's ownership of two additional media outlets in the market. Newsweb asserts that this potential market power is sufficient to demonstrate a direct and substantial economic injury under the standard set forth in *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940).

3. The Commission generally permits television-radio combinations which meet the "Top 25 Markets/30 Voices" test set forth in *Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules* ("Second Report and Order"), 4 FCC Rcd 1741 (1989), *recon. denied in part and granted in part*, 4 FCC Rcd 6489 (1989).[3] In the *Second Report and Order*, the Commission concluded that it would "look favorably upon waiver requests when the radio and television stations involved are located in the top 25 ADI television markets as defined by Arbitron Ratings Company and in addition where, following the proposed combination, there will be at least 30 separately owned, operated and controlled broadcast licensees or 'voices'." *Second Report and Order*, 4 FCC Rcd at 1751. The Commission has determined that "the advantages of permitting radio-television combinations in the top 25 markets, which have numerous competing voices, generally would not undermine the benefits derived from the Commission's traditional pro-competitive and diversity policies." *The Helen Broadcasting Co. Limited Partnership*, 5 FCC Rcd 2829, 2833 (1990). *See Cook Inlet Radio Partners, L.P.*, 7 FCC Rcd 2330 (1992); *Group W Radio Acquisition Co.*, 4 FCC Rcd 8343 (1989).

4. In support of its waiver request, Tribune Denver presents evidence to demonstrate that it has satisfied the "Top 25 Markets/30 Voices" standard. Specifically, Tribune Denver, using 1991 data, asserts that the Denver market, which includes Aurora, is the 19th largest Area of Dominant Influence (ADI) television market and also submits evidence that there will be 43 separately owned, operated

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[1] Section 73.3555(b) of the Commission's Rules prohibits the common ownership of radio and television stations in the same market if the 2 mV/m contour of an AM station or the 1 mV/m contour of an FM station encompasses the entire community of license of a television station or if the Grade A contour of a television station encompasses the entire community of license of an AM or FM station.

[2] Section 73.635 of the Commission's rules provides that "[n]o television license or renewal of a television license will be granted to any person who owns, leases, or controls a particular site which is peculiarly suitable for television broadcasting in a particular area and (a) which is not available for use by other television licensees; and (b) no other comparable site is available in the area; and (c) where the exclusive use of such site by the applicant or licensee would unduly limit the number of television stations that can be authorized in a particular area or would unduly restrict competition among television stations."

[3] The "Top 25 Markets/30 Voices" standard is set forth in Note 7 to the one-to-a-market rule. *See* 47 C.F.R. Sec. 73.3555 n.7.

and controlled broadcast station "voices" in the Denver area after the subject assignments are consummated. Newsweb does not dispute the sufficiency of Tribune Denver's showing pursuant to the "Top 25 Markets/Top 30 Voices" standard. However, Newsweb argues that the *Second Report and Order* specifically allows for rebuttal of a requested waiver by a party-in-interest filing a petition to deny. *See* 4 FCC Rcd at 1752. In this regard, Newsweb asks the Commission to find that provisions of Section 73.635 require Tribune subsidiary KWGN to provide KTVJ(TV) access to KWGN(TV)'s towers and that KWGN's prior failure to grant this access demonstrates anti-competitive behavior that constitutes an independent basis for denying or conditioning the grant of the application at issue.

5. We find that the evidence presented by Tribune Denver demonstrates, based on our attribution rules, that following the proposed assignment, there will be at least 30 separately owned, operated and controlled broadcast stations in the Denver area.[4] Further, it appears that Denver, which includes Aurora, the community of license of KEZW(AM), ranks 21st among the top 25 ADI television markets.[5] Accordingly, Tribune Denver's waiver request has provided the necessary documentation to meet the "Top 25 Markets/30 Voices" standard and, in the absence of rebuttal, to demonstrate that waiver of the rule is warranted.

6. Newsweb asserts that KWGN's failure to give KTVJ(TV) access to its transmitting towers, in violation of Section 73.635, is sufficient to rebut the requested one-to-a-market waiver. Tribune Denver, however, contends that Newsweb lacks standing to base its rebuttal on an alleged violation of the unique site rule applicable to television licensees. Even assuming, *arguendo*, that Newsweb has satisfied the standing requirements of Section 309(d) of the Communications Act of 1934, as amended,[6] the matters raised by Newsweb with respect to Section 73.635 do not justify the relief Newsweb requests, namely, denial of the assignment application or grant of the application with a condition mandating access to KWGN's television towers.

7. As a threshold matter, Section 309(d) requires a two-step analysis for evaluating the sufficiency of a petition to deny. First, we must determine whether the petition contains specific allegations of fact which demonstrate that grant of the subject application would be inconsistent with the public interest. *See Astroline Communications Company v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988). In making this threshold determination, we assume that the specific facts set forth by the complaining party are true, based on the petitioner's allegations alone. We are limited to the petition and the supporting affidavits. *See Astroline*, 857 F.2d at 1561; *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 397 (D.C. Cir. 1985). If the threshold standard is met, and a *prima facie* case has been presented, we must consider whether on the bases of the application, the pleadings filed, or other matters of which official notice may be taken, a substantial and material question of fact is presented. *See* 47 U.S.C. § 309(d)(2); *Astroline*, 857 F.2d at 1561. Should we conclude that such a question of fact has been raised, or if we cannot, for any reason, find that grant of the application would be consistent with the public interest, the Commission must conduct a hearing in accordance with 47 U.S.C. § 309(d)(2).

8. With regard to the substantive matters raised by Newsweb concerning Section 73.635, we find no *prima facie* case has been made based on Newsweb's allegations that KWGN has an obligation to give KTVJ(TV) access to its towers. Section 73.635(b) requires a showing that there are no other comparable sites available in the area. Newsweb generally recites the history of its unsuccessful efforts to locate a site for an antenna tower on Lookout Mountain, attributable in part to zoning, interference and radiofrequency radiation issues. Citing *WTCN Television, Inc.*, 14 FCC 2d 870 (Rev. Bd. 1968), Newsweb argues that Lookout Mountain itself is a "unique site" for purposes of Section 73.635 and therefore, that each licensee on Lookout Mountain has an independent obligation pursuant to Section 73.635 to provide KTVJ(TV) tower access.[7] *WTCN* involved the applications of five television licensees to move to a common antenna site in the Minneapolis-St. Paul area in order to establish a tall tower antenna farm as a means of accomodating both maximum coverage and air safety. Based on the formation of a *de facto* antenna farm, the Commission granted the applications on the condition that the antenna structures be made available to present and future permittees who make requests for tower space on a fair and equitable basis. *See United Television, Inc.*, 38 FCC 2d 655 (1972), *United Television, Inc.*, 54 FCC 2d 291 (1975). Newsweb does not argue that similar air hazard concerns are present in the instant case. Furthermore, *WTCN* provides no basis on which to find that Lookout Mountain itself is the "unique site" or that Newsweb has otherwise satisfied the requirements of subsection (b) of the rule by demonstrating that no comparable sites are available. Accordingly, we conclude no *prima facie* case has been presented. In any event, Newsweb presently has pending an application to modify its construction permit to move its antenna to a new site on Lookout Mountain that is not controlled by KWGN. *See* BMPCT-920612KG. Although this application was filed prior to the filing of Newsweb's petition to deny the instant assignment application, Newsweb did not reference the pending modification application in its petition to deny. Newsweb has not amended this application to indicate nor has it in any other manner suggested that the site upon which that application relies is not viable or that it is not "com-

[4] Although Tribune Denver's exhibit indicates that there will be a total of 43 separately owned and operated stations in the relevant area after consummation, Commission records indicate that one radio station listed, KTMG(AM), is silent. Thus, KTMG cannot be counted as a voice under the "Top 25 Markets/30 Voices" standard. *See Second Report and Order*, 4 FCC Rcd at 1759 n.86. However, it also appears that Tribune Denver's exhibit fails to include some television stations licensed to the relevant ADI television market according to the 1992 *Arbitron Ratings Television ADI Market Guide*. In any event, the relevant market includes well over the 30 voices required by the standard.

[5] According to the 1992 *Arbitron Ratings Television ADI Market Guide*, Denver ranks 21st of the top 25 ADI television markets and not 19th as Tribune Denver's exhibit indicates. However, this difference in rankings is not of decisional significance because, in either case, the Denver market is ranked among the top 25 markets.

[6] 47 U.S.C. Sec. 309 (d)

[7] In this regard, we note that Channel 31 Licensee Corporation has filed an application to assign the license of KDVR(TV), another station whose tower is located on Lookout Mountain. Newsweb has filed a petition to deny the pending KDVR(TV) assignment.

parable" to the KWGN site. Thus, even if a *prima facie* case existed, there are no substantial and material questions of fact.

9. Thus, Newsweb has not demonstrated the lack of a comparable site, one of the three parts of Section 73.635, all of which must be satisfied before the unique antenna site rule is applicable to a television licensee. Therefore, Section 73.635 imposes no obligation on KWGN to grant Newsweb access to its transmitter towers. Although we need not address other matters raised by Newsweb's with respect to Section 73.635, we nonetheless note that the third element of the rule, Section 73.635(c), requires a showing that exclusive use of the KWGN(TV) towers would restrict television service in the area or otherwise limit competition among television stations. In this regard, Newsweb claims that KTVJ(TV) will provide first local service to Boulder. However, Newsweb acknowledges, and it is undisputed that Boulder and Denver are part of the same television market. The 1992 *Arbitron Ratings Television ADI Market Guide* lists a total of twelve commercial television stations licensed to the Denver market. Thus, the market is served by a substantial number of television broadcasters, and Newsweb also has not met its burden under Section 73.635(c). *See K-W TV, Inc.*, 7 FCC Rcd 3617, 3620 (1992).

10. Under these circumstances, Newsweb has not met the burden imposed by Section 309(d).[8] Furthermore, Tribune Denver is otherwise qualified to be a Commission licensee and, therefore, we find that a grant of the subject assignment application would serve the public interest.

11. *Conclusion.* In view of the foregoing, IT IS ORDERED, That the Petition to Deny filed July 23, 1992 by Newsweb Corporation IS HEREBY DENIED. IT IS FURTHER ORDERED, That, the request for waiver of the Commission's one-to-a-market rule, 47 C.F.R. Sec. 73.3555(b), IS HEREBY GRANTED, and the application for assignment of the licenses of KEZW(AM)/KOSI-FM, Aurora, Colorado and Denver, Colorado from D & D Broadcasting, Inc. to Tribune Denver Radio, Inc. ARE HEREBY GRANTED. IT IS FURTHER ORDERED, That this action shall be effective immediately upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

[8] Accordingly, we need not inquire further into KWGN's business judgement regarding the use of its television towers or inquire into pending zoning matters. Therefore, we decline to address Newsweb's arguments concerning KWGN's rejection of Newsweb's co-location and consolidation proposals.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: December 2, 1992

PLEADING CYCLE FOR COMMENTS ON THE STATE MEMBERS' PLAN FOR THE INTERSTATE ALASKA MARKET STRUCTURE

CC Docket No. 83-1376

On January 29, 1992, American Telephone and Telegraph Co. (AT&T) and Pacific Telecom, Inc. (PTI), Alascom, Inc. (Alascom), and Telephone Utilities of Alaska, Inc. (TUA) filed a Master Agreement proposing a new interstate market structure for Alaska for the purpose of resolving the issues currently before this Joint Board. Between January 29, 1992, and today, numerous parties provided comments on the Master Agreement and several modifications to the Agreement have been proposed.

On November 5, 1992, the state members of this Joint Board circulated a Memorandum of Principles Alaska Market Structure: The State Members' Plan (Memorandum). The Memorandum found that the Master Agreement was not in the best interest of the public and proposed an alternative market structure.

While evaluation of the state members' plan is continuing, further information on that plan would be useful. Consequently, further comment is sought on the proposal advanced by the state members. Interested parties are encouraged to comment in detail on the underlying concepts in the Memorandum and to suggest refinements or amendments to the proposed market structure.

Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before **December 18, 1992,** and reply comments on or before **January 15, 1993**. To file formally in this proceeding, persons must file an original and five copies of all comments, reply comments, and supporting comments. Parties that want each Commissioner to receive personal copies of their comments must file an original and nine copies. Parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition, parties should file two copies of any such pleadings with the Policy and Program Planning Division, Common Carrier Bureau, Room 544, 1919 M Street, N.W., Washington, D.C. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Downtown Copy Center, 1990 M Street, N.W., Suite 640, Washington, D.C. 20036 and to those identified on the attached service list. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. For further information regarding this Notice, contact Patrick Donovan, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-1295.

FEDERAL COMMUNICATIONS COMMISSION

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Palmerton Telephone Company

Telephone Utilities of the
Northland, Inc.

Requests for Waiver of
the Commission's Equal Access
Implementation Plan for
Independent Telephone Companies

MEMORANDUM OPINION AND ORDER

Adopted: December 4, 1992; Released: December 7, 1992

By the Chief, Policy and Program Planning Division:

1. In this order we grant two petitions for waiver of the Commission's equal access rules filed by independent telephone companies (ITCs). In the *ITC Equal Access Order*,[1] the Commission required ITCs to convert their end offices to equal access only if certain conditions were present. That order also established a timetable for conversion under those circumstances. Strict timetables for conversion had been imposed upon the Bell Operating Companies (BOCs) under the Modification of Final Judgment (MFJ),[2] and upon the GTE operating companies under the GTE Consent Decree.[3] The Commission recognized differences between the BOCs and ITCs with respect to the types of markets served, switching technologies employed, and financial resources available to undertake equal access conversion. Because of these differences, the Commission concluded that timetables of the type imposed upon the BOCs and the GTOCs would "not be appropriate for the non-GTE ITCs.

2. Instead, the Commission required ITCs to convert end offices equipped with stored program controlled (SPC) switches within three years of a reasonable request for conversion to equal access by an interexchange carrier. The *ITC Equal Access Order* provided, however, that ITCs may seek a waiver of the Commission's rules if they "can demonstrate that such a timetable, or the provision of such access features, is not feasible except at costs that clearly outweigh potential benefits to users of telecommunications services."[4]

3. In this order, we consider the petitions for waiver of the equal access implementation requirements filed by Palmerton Telephone Company (Palmerton) and Telephone Utilities of the Northland, Inc. (TUNI). In November 1989, Palmerton received a request for equal access conversion from the interexchange carrier, MCI Telecommunications Corporation (MCI). On June 5, 1989, TUNI received a request for equal access conversion from the interexchange carrier, General Communications Incorporation (GCI). Pursuant to the Commission's rules, the companies were required to complete equal access conversion within three years. The petitioners state that, for various reasons, they require additional time to implement equal access.

4. On May 8, 1992, Palmerton filed a petition requesting an additional six months, until May 1, 1993, to implement equal access. Palmerton states that its equal access conversion required replacement of central processing units (CPUs) in three switches. According to Palmerton, at the time of MCI's request, the CPUs were under development by the manufacturer and were to be available in mid-1990. Palmerton states that the manufacturer experienced developmental delays, and the new CPUs were not delivered and installed until January of 1992. Palmerton states that, after the new equipment was installed, software and hardware problems were uncovered during the trial period. Palmerton states that the software manufacturer is currently testing the software to ensure its reliability. Palmerton states that it anticipates completing the equal access conversion by May 1993. Palmerton states that it has notified MCI of the delay, and MCI has no difficulties with delaying the conversion.

5. On June 11, 1992, TUNI filed a petition seeking a waiver for its Kodiak Base central office. TUNI requests an additional six months, until December 5, 1992, to complete the equal access conversion. TUNI states that it has completed the equal access conversion in seven central offices, but that there are unique and special circumstances surrounding the conversion of its Kodiak Base central office.

6. TUNI states that at the time of GCI's request, TUNI was involved in discussions with the U.S. Coast Guard (USCG) regarding USCG's desire to relocate the existing Kodiak Base central office switch.[5] TUNI states that the relocation of the Kodiak Base central office involves the purchase and installation of a new switch, which would be capable of providing equal access. TUNI states that it entered into a special contract with USCG whereby TUNI would provide Digitrex (central office-based switching) services to the USCG via a DMS-100 switch. TUNI states that recovery of certain costs associated with the DMS-100 would be allocated between the equal access and Digitrex functions performed by the switch.[6] TUNI states that, based on the contract with USGC, it ordered the new switch to replace the existing DMS-10 switch.

7. TUNI states that in September 1991, the USGC notified TUNI that the contract was invalid because the USCG person signing the contract was not authorized to do so.

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[1] *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase III Order, 100 FCC 2d 860 (1985) (*ITC Equal Access Order*).

[2] *United States v. American Tele. & Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom. *Maryland v. United States*, 460 U.S. 1001 (1983).

[3] *United States v. GTE Corp.*, 603 F. Supp. 730 (D.D.C. 1984).

[4] *ITC Equal Access Order*, 100 FCC 2d at 875, para. 50.

[5] TUNI states that the majority of customers served by the Kodiak Base central office are associated with the USCG base, and that TUNI's Kodiak Base central office is physically located on the USCG base. TUNI Petition at 3.

[6] The Commission's separations rules define equal access costs and specify procedures for the allocation of these costs between the state and federal jurisdictions. *See* 47 C.F.R. §§ 36.191 and 36.421.

TUNI states that it interrupted installation of the new switch until the contract dispute can be settled. TUNI states that it is important to resolve the issue of whether TUNI will receive revenues from the Digitrex service because installation of the new switch solely for the purpose of providing equal access would not be economically feasible. TUNI states that it has been involved in ongoing discussions with USCG regarding the validity of the contract and other viable options for equal access implementation. TUNI adds that it notified the interexchange carriers about the delay. TUNI argues that the additional six months will allow it to install the equipment that is most appropriate for both the provision of equal access as well as the specific needs of its customer base. TUNI also argues that hasty installation of a new central office switch at Kodiak Base solely to meet the equal access conversion schedule could result in costs that outweigh the benefits.

8. Based on our review of the record, we conclude that the requested waivers are in the public interest. The petitioners have set forth circumstances justifying their requests, and no one has opposed these waiver requests.[7] In addition, the interexchange carriers requesting equal access have not opposed the petitioners' proposed new completion dates for equal access conversion. We conclude that the companies have demonstrated that the timetables established by the Commission's rules are not feasible "except at costs that clearly outweigh potential benefits."[8]

9. Accordingly, IT IS ORDERED that the petitions for waiver of the equal access implementation requirements are GRANTED to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

James D. Schlichting
Chief, Policy and Program
Planning Division
Common Carrier Bureau

[7] The United States Telephone Association filed comments supporting the waiver requests.
[8] *See ITC Equal Access Order* at para. 50.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: December 7, 1992

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON EMERGENCY PETITION OF SPRINT COMMUNICATIONS COMPANY FOR DECLARATORY RULING

REVISED PLEADING CYCLE ESTABLISHED FOR COMMENTS ON PETITION OF THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE FOR EXPEDITED MODIFICATION OF FRESH LOOK POLICY

CC Docket No. 90-132

On December 2, 1992, Sprint Communications Company LP (Sprint) filed an emergency petition for declaratory ruling requesting modification of the "fresh look" policy that was adopted in the Commission's September 16, 1991 *Report and Order* in the Interexchange Competition proceeding (CC Docket No. 90-132). The "fresh look" policy will allow customers of Tariff 12s with inbound service that had executed agreements with AT&T or had begun taking service on or before April 16, 1992 to terminate their Tariff 12 arrangements without liability within ninety days of the implementation of 800 number portability. Sprint asks the Commission to extend the "fresh look" period until 180 days after the implementation of 800 number portability, and to expand the policy to include all of AT&T's 800 service term plans.

Sprint argues that 800 service customers may be wary about shifting 800 traffic to a new carrier when data base access is implemented. Sprint asserts that the "fresh look" period should be extended to 180 days to allow customers to become more familiar with, and to gain more confidence in, the data base system, and to test the services of other carriers before deciding how much traffic to give them.

Sprint also argues that the "fresh look" policy should be extended to all of AT&T's 800 term plan customers, asserting that the same rationale applied in creating a "fresh look" policy for Tariff 12 offerings is equally applicable to all 800 service term plans. Sprint asks that the Commission allow customers of any AT&T 800 service term plan, who use 800 numbers that were in use as of April 16, 1992, to discontinue service without early termination liability for 180 days after 800 number portability is available.

On December 2, the same day the Sprint petition was filed, the Commission issued a Public Notice establishing a pleading cycle for comments on a petition filed by the Ad Hoc Telecommunications Users Committee (Ad Hoc), which also sought modification of the "fresh look" policy. (DA 92-1639) Ad Hoc has requested that the Commission extend the "fresh look" period until at least ninety days after full implementation of an automated notice-and-acceptance functionality in the 800 data base Service Management System. The Commission is revising the pleading cycle for the Ad Hoc petition to allow parties to file one set of consolidated comments on both the Ad Hoc and Sprint petitions.

Interested parties are to file consolidated comments addressing both the Sprint and Ad Hoc petitions by **January 6, 1993,** and consolidated reply comments by **January 15, 1993,** with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Suzanne M. Tetreault, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's copy contractor, Downtown Copy Center, 1990 M Street, N.W., Suite 640, Washington, D.C. 20036.

For further information, contact Suzanne M. Tetreault or Andre J. Lachance, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-6374 and (202) 632-1305, respectively.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Capital Network Systems, Inc. — Transmittal No. 1

Tariff F.C.C. No. 2

MEMORANDUM OPINION AND ORDER

Adopted: November 13, 1992; Released: December 2, 1992

By the Commission:

I. INTRODUCTION AND BACKGROUND

1. On June 13, 1991, Capital Network Systems, Inc. (Capital) filed Transmittal No. 1 to introduce Interstate Common Carrier Transfer Service (IXC Transfer Service). Capital indicated it would automatically provide IXC Transfer Service when an end user reached Capital facilities or services to make an interstate call by dialing a service prefix indicator (*e.g.* "+", "-") and the end user attempted to charge the call to a non-joint use calling card.[1] In these cases, Capital proposed to transfer the telephone call at the originating location to the local exchange carrier (LEC). The transmittal assumed the LEC would then transfer the call to the interexchange carrier (IXC) which could validate and bill the call. The tariff filing was unopposed.

2. The Common Carrier Bureau rejected Transmittal 1 as patently unlawful, determining it to be unclear and ambiguous in violation of Part 61 of the Commission's Rules, 47 C.F.R. Part 61.[2] The Bureau also concluded that the "transmittal appeared to violate Section 201(b) of the Communications Act, 47 U.S.C. § 201(b). The Bureau reasoned that if the service described in the tariff was an attempt by Capital to label the IXC to which the call is eventually transferred as a "customer" and charge it for a service that it neither ordered nor received, the tariff would be unreasonable.[3]

3. On October 9, 1991, Capital filed an application for expedited review of the *Capital Rejection Order*. On October 24, 1991, the American Telephone and Telegraph Company filed an opposition to Capital's application for review, while the Competitive Telecommunications Association (CompTel) filed comments in support of Capital's application on October 31, 1992. Capital replied to AT&T on November 6, 1991. For the reasons discussed below, we deny Capital's application for review.

II. DISCUSSION

A. Non-Dominant Carrier Tariff Filings

4. In its application for review, Capital asserts that the Commission ignored the presumption of lawfulness that exists for non-dominant carrier tariff filings and abused its limited authority to reject such a tariff. Capital Application at 11, 13-17.[4] Capital claims the Bureau, in fact, applied a stricter standard of review to its tariff filing than it would apply to tariffs filed by dominant carriers. *Id.* at 16-17. *See also* CompTel Comments at 5. AT&T, however, argues that Title II of the Communications Act applies equally to both dominant and non-dominant carriers and therefore, the Commission must reject any tariff that violates the Act or the Commission's rules. AT&T Opposition at 2.

5. Tariffs filed by non-dominant carriers are not immune from rejection by the Commission. While tariff filings by non-dominant carriers enjoy a presumption of lawfulness, non-dominant carriers must still comply with the Communications Act and the Commission's rules implementing the Act.[5] Therefore, if Capital's proposed tariff violated the Act or the Commission's rules, the Bureau, acting pursuant to delegated authority, has the power to reject it. For the reasons discussed below, we agree with the Bureau that Transmittal 1, as filed, did in fact patently violate the Commission's rules. In addition, we find that the tariff patently violated Section 201(b) of the Communications Act.

B. Compliance with Section 201(b) of the Act

6. Capital argues that its provision of IXC Transfer Service was not an unreasonable practice under Section 201(b) of the Act even though Capital would treat carriers not affirmatively ordering the service as its "customers." It maintains that it is not unreasonable to charge a party for service when that party both causes costs to the service provider and receives a benefit. Capital Application at 20-21. *See also* CompTel Comments at 3-4. Capital and CompTel believe that a carrier "assumes the risk" for its decision to issue proprietary calling cards which Capital can not validate because Capital then must incur the costs involved with transferring these calling card calls to the issuing IXC. Capital Application at 24; CompTel Comments at 4.[6]

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[1] Capital defined a non-joint use calling card as any calling card issued by an IXC which does not allow Capital to validate it for billing purposes, or which Capital is unable to validate for other reasons. Non-joint use calling cards may include Carrier Issuer Identification (CIID) cards.

[2] Capital Network Systems, Inc., Tariff F.C.C. No. 2, Transmittal No. 1, 6 FCC Rcd 5609 (Com.Car.Bur. 1991) (*Capital Rejection Order*).

[3] *Id.* at 5609-10.

[4] *Citing* Policy and Rules Concerning Rates and Facilities Authorizations for Competitive Carrier Services (CC Docket No. 79-252), First Report and Order, 85 FCC 2d 1 (1980); Second Report and Order, 91 FCC 2d 59 (1982), *recon.*, 95 FCC 2d 54 (1983); Third Report and Order, 48 Fed. Reg. 46,791 (Oct. 15, 1983); Fourth Report and Order, 95 FCC 2d 554 (1983); Fifth Report and Order, 98 FCC 2d 1191 (1984) (Fifth Report), *recon.*, FCC 85-572 (Mimeo No. 36251), rel. Nov. 20, 1985; Sixth Report and Order, 99 FCC 2d 1020 (1985) (Sixth Report), *vacated sub nom.* MCI Communications Corp. v. FCC, 765 F.2d 1186 (D.C.Cir. 1985).

[5] *See* Competitive Carrier, First Report and Order, 85 F.C.C. 2d at 18.

[6] Section 226(b) of the Act prohibits operator service providers from recovering these costs from consumers placing the interstate calls. Capital states it incurs the following costs in transferring calls to other interstate common carriers: costs of access

7. AT&T maintains that it was proper for the Bureau to reject Transmittal 1 because it constituted an unreasonable practice under Section 201(b) of the Act. It states that Capital would have had discretion selectively to transfer only certain end users to a LEC operator and then presume the LEC will transfer their calls to an IXC. Capital then intended, says AT&T, to render a bill for this service irrespective of whether the IXC ever received a call from the LEC or whether the IXC wished to even receive the service. AT&T Opposition at 4. AT&T insists that Capital offers no authority to impose a charge for service that it expressly does not want. *Id.*

8. Capital replied to AT&T on November 6, 1991.[7] Capital claims that the proposed tariff was nondiscriminatory because it required Capital to transferall end users who insist on using any non-joint use calling card.

9. We also conclude that Transmittal 1, as filed, patently violated Section 201(b) of the Communications Act, 47 U.S.C. § 201(b), which mandates that interstate communication practices be just and reasonable and declares unlawful any practice found to be unreasonable.[8] We recognize that Capital claims that its tariff is designed to ensure compensation for costs incurred when attempting to complete calls made by customers using non-joint use calling cards.[9] Under the Capital tariff, however, the IXC has no way of knowing that it is even receiving any service because there is no direct access between Capital and the IXC. Moreover, Capital intended to switch the call to the LEC at the originating location and then assume the LEC would transfer the call to the card issuing IXC.[10] Capital would charge the IXC at the moment Capital switched the call to the LEC even though the LEC may or may not switch the call to the appropriate IXC. We conclude that it is patently an unreasonable practice for Capital to automatically charge an entity for a service it did not order and may not have received.[11]

C. Part 61-Compliance with Tariff Filing Requirements

10. Contrary to the Bureau's reasoning in the *Capital Rejection Order*, Capital insists that Transmittal 1 explicitly describes to whom the tariff applied and the rates to be charged in conformance with Sections 61.2 and 61.54(j) of the Commission's Rules, 47 C.F.R. §§ 61.2, 61.54(j).[12] It is clear, says Capital, that when certain conditions are met, it would treat an IXC as a customer subject to the charges established by the tariff. Capital Comments at 18-19.[13] AT&T claims, however, that Capital's proposal to provide IXC Transfer Service was vague and ambiguous because it did not describe the service Capital would provide to the IXC nor did it indicate how an IXC could subscribe to the service. AT&T Opposition at 3. AT&T distinguishes Capital's proposed transfer service from similar services offered by local exchange carriers (LECs) by arguing that the LECs' tariffs clearly describe the service and the method for ordering it. *Id.* at 3, n.***.

11. We also affirm that Transmittal 1 was unclear and ambiguous in patent violation of Part 61 of the Commission's Rules. Section 61.2 and 61.54(j) require clear and definite statements of a carrier's rates and regulations as well as the exceptions and conditions contained in the tariff. Capital's IXC Transfer Service tariff did not clearly describe when a party would be charged for a call transfer. For example, Capital claims it is has no choice but to transfer to IXCs all calls made by end users using a calling card Capital can not validate. Capital Application at 5-7. Yet, Transmittal 1 reserves the right of Capital to have the

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and transport from the telephone calls' originating location to the Capital operations center and switch; the cost of switching capacity used while Capital attempts to validate the end user's calling card; the costs of automated interface and/or live intervention by operators; and the costs of transporting the call back to the originating location for connection to the interexchange carrier. Capital reports that these costs average $100,000 to $200,000 per month. *See* Capital Application at 5-6.

[7] On September 3, 1992, Capital filed a letter to further supplement its application for review, requesting leave under Section 1.45 of the Commission's rules, 47 C.F.R. § 1.45, to file the letter in order "to address events relevant to this proceeding which have occurred after the normal pleading cycle closed." Capital Letter at 1. In the letter, Capital essentially reiterates AT&T's comments in United Artists Payphone Corporation v. AT&T, FCC File No. E-90-182 and in another proceeding pending before the Commission. Capital argues thatAT&T contradicts itself in its arguments in these proceedings and in its comments regarding Capital's application for review. On September 14, 1992, AT&T filed a letter in response to Capital explaining the differences between the cited proceedings. Capital filed a further letter on September 25, 1992 repeating its arguments against AT&T. These other proceedings have not yet been resolved and, therefore, we do not address them here.

[8] Despite our conclusion as to the unlawfulness of the instant transmittal, Capital is, of course, free to restructure its transfer service and refile its tariff, with appropriate clarifications, so as to bring its offering into compliance with the Act.

[9] The Commission recently sought further comment on ways to provide for adequate compensation to operator service providers (OSPs) attempting to validate 0+ calls made by customers using non-joint use calling cards. One option being explored is mutually agreed upon call transfer arrangements between the OSPs and the IXCs. Billed Party Preference for 0+ InterLATA Calls, Report and Order and Request for Supplemental Comment, CC Docket No. 92-77, Phase I, FCC 92-465, adopted Oct. 8, 1992.

[10] Situations may arise where the end user's call is not actually transferred to the IXC. Once connected to the LEC operator, an end user may decide not to complete the call or the call may be handled entirely by the LEC.

[11] Capital argues that the Bureau allowed Bell Atlantic's operator transfer service tariff to become effective. Application at 15-16. However, under Bell Atlantic's offering, Bell Atlantic charges an IXC for a call transfer only if the IXC affirmatively subscribes to the service. *See* Bell Atlantic Telephone Companies, Tariff F.C.C. No. 1, Tr. No. 262, 4 FCC Rcd 455 (Com.Car.Bur. 1988). Therefore, Bell Atlantic's call transfer service is unlike Capital's proposed service.

[12] Section 61.2 states,

> In order to remove all doubt as to their proper application, all tariff publications must contain clear and explicit explanatory statements regarding the rates and regulations.

Section 61.54(j) states,

> The general rules (including definitions), regulations, exceptions, and conditions which govern the tariff must be stated clearly and definitely.

[13] *See* para. 1 *supra*.

discretion to refuse to transfer these calls.[14] It is unclear from Transmittal 1 whether Capital would impose its transfer fee uniformly on all IXCs for all end user calls or only on selective calls. Therefore, any prospective customers of IXC Transfer Service would not be able to discern who could use the service or when they would actually receive calls for which they would be charged.[15]

IV. CONCLUSION AND ORDERING CLAUSE

12. Therefore, we conclude that the Common Carrier Bureau did not err in rejecting Transmittal 1 as patently unlawful. The transmittal, as filed, was vague and ambiguous in violation of §§ 61.2 and 61.54(j) of the Commission's rules and constituted an unreasonable practice under Section 201(b) of the Act. 8 Accordingly, we affirm the Bureau's decision to reject Transmittal 1.

13. Accordingly, IT IS ORDERED that the application for review filed by Capital Network Systems, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

[14] Capital Tariff F.C.C. No. 2, proposed Section 2.2(d).
[15] *See, e.g.*, Mountain States Telephone and Telegraph Company, et al., 3 FCC Rcd 2314, 2315 (Com.Car.Bur. 1988).

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: December 7, 1992

FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for fee decisions in response to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. On a monthly basis, a public notice is released and the entire text of these fee decisions is published in the FCC Record.

The decisions are placed in General Docket 86-285 and are available for public inspection. A copy of the decision is also placed in the appropriate docket, if one exists.

The following Managing Director fee decisions are released for public information:

Broad Spectrum Communications, Inc., Phoenix Broadcasting, Inc., and Ninety-Two Seven, Ltd. - Joint request for refund of the hearing fees for a new FM station at Chico, California - **Denied** (November 16, 1992).

Eicher Communications, Inc. - Request for refund of a hearing fee for a new FM station at Bethany Beach, Delaware - **Granted** (October 29, 1992).

First Assembly of God Church - Request for refund of a hearing fee for a new FM station at Oglesby, Illinois - **Granted** (October 29, 1992).

Mountainview Broadcasting Corp. - Request for refund of a hearing fee for a new FM station at Westport, New York - **Granted** (October 29, 1992).

Penrod, Shirley A. - Request for refund of a hearing fee for a new FM station at South Waverly, Pennsylvania - **Denied** (October 29, 1992).

Rosamond Radio, Inc. - Request for refund of a hearing fee for a new FM station at Rosamond, California - **Granted** (October 29, 1992).

Snipe, Jr., Alexander d/b/a Glory Communications - Request for refund of hearing fee for a new FM station at South Congaree, South Carolina - **Granted** (October 29, 1992).

Studstill, Doris A. - Request for refund of a hearing fee for a new FM station at Oglesby, Illinois - **Granted** (October 29, 1992).

NOTE: ANY QUESTIONS REGARDING THIS REPORT SHOULD BE DIRECTED TO THE PREPARER, CLAUDETTE PRIDE, CHIEF, FEE SECTION ON (202) 632-0241.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

NOV 16 1992

Margaret L. Tobey, Esq.
Akin, Gump, Hauer
& Feld, L.L.P.
1333 New Hampshire Ave., N.W.
Suite 400
Washington, D.C. 20036

Dennis J. Kelly, Esq.
Cordon & Kelly
Post Office Box 6648
Annapolis, Maryland 21401

Donald E. Martin, P.C.
2000 L Street, N.W.
Suite 200
Washington, D.C. 20036

Dear Ms. Tobey and Messers. Kelly and Martin:

This will respond to your request for refund of hearing fee filed on behalf of Broad Spectrum Communications, Inc. ("BSCI"), Phoenix Broadcasting, Inc. ("Phoenix"), and Ninety-Two Seven, Ltd. ("NTSL") in connection with their construction permit applications for a new FM station at Chico, California.

You state that prior to the Notice of Appearance deadline, BSCI, Phoenix and NTSL filed a settlement agreement that reflected their merger and, if granted, would result in the grant of the Phoenix application. You also state that you have submitted all necessary amendments, and requested deletion of the contingent environmental issue specified against Phoenix.

Section 1.1111(c)(4) of the Commission's rules provides for refund of a hearing fee whenever applications are withdrawn pursuant to a settlement agreement, prior to the Notice of Appearance deadline, and the remaining application is immediately grantable. In the instant case, the settlement agreement is still under review, and the contingent environmental issue against Phoenix has not yet been deleted. See Order, FCC 92M-945 (Sept. 11, 1992). Therefore, although the settlement agreement was timely filed, the refund request is premature.

Accordingly, at this time, we are unable to consider your request for refund and it must therefore be denied without prejudice. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

OCT 29 1992

Stephen Diaz Gavin
Besozzi & Gavin
1901 L Street, N.W.
Suite 200
Washington, D.C. 20036

Dear Mr. Gavin:

This will respond to your request for refund of a hearing fee filed on behalf of Eicher Communications, Inc. ("Eicher") in connection with its construction permit application for a new FM station at Bethany Beach, Delaware.

You state, and your documentation demonstrates that, prior to the Notice of Appearance deadline, Eicher voluntarily dismissed its application, and the single remaining applicant was grantd.

Section 1.1111 (c)(4) of the Commission's rules provides for a refund of a hearing fee whenever an application is withdrawn pursuant to a settlement agreement prior to the Notice of Appearance deadline. Since the settlement agreement was timely filed and the remaining application was granted, refund of the hearing fee is appropriate.

Accordingly, your request is granted. A check, made payable to the maker of the original check and drawn in the amount of $6,760.00, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

OCT 29 1992

Mr. Kenneth E. Satten
Ms. Christine V. Simpson
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Satten and Ms. Simpson:

This will respond to your request for refund of a hearing fee filed on behalf of the First Assembly of God Church in connection with its construction permit application for a new FM station at Oglesby, Illinois.

You state and your documentation demonstrates that, prior to the Notice of Appearance deadline, the First Assembly of God Church voluntarily dismissed its application, and the single remaining applicant was granted.

Section 1.1111 (c)(4) of the Commission's rules provides for a refund of a hearing fee whenever an application is withdrawn pursuant to a settlement agreement prior to the Notice of Appearance deadline. Since the settlement agreement was timely filed and the remaining application was granted, refund of the hearing fee is appropriate.

Accordingly, your request is granted. A check, made payable to the maker of the original check and drawn in the amount of $6,760.00, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

S/ MJM for

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OCT 29 1992

OFFICE OF
MANAGING DIRECTOR

Peter Tannewald, Esq.
Arent, Fox, Kintner & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

Dear Mr. Tannewald:

This will respond to your request for refund of a hearing fee filed on behalf of Mountainview Broadcasting Corp. ("Mountainview") in connection with its construction permit application for a new FM station at Westport, New York.

You state, and your documentation demonstrates that, prior to designation for hearing, Mountainview entered into a settlement agreement with its competing applicant. The settlement agreement was approved, and Mountainview's application was dismissed. Under the circumstances, since Mountainview voluntarily dismissed its application and was not designated for hearing, refund of the hearing fee is appropriate. See 47 C.F.R. §1.1111(c)(2); see also Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 157, 158 (1990).

Accordingly, your request is granted. A check, made payable to the maker of the original check and drawn in the amount of $6,760.00, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

OCT 29 1992

Robert L. Olender, Esq.
Baraff, Koerner, Olender
& Hochberg, P.C.
5335 Wisconsin Avenue, N.W.
Suite 300
Washington, D.C. 20015-2003

Dear Mr. Olender:

This will respond to your request for refund of hearing fee filed on behalf of Shirley A. Penrod, in connection with her construction permit application for a new FM station at South Waverly, Pennsylvania.

You have requested a refund because, prior to hearing, Ms. Penrod voluntarily dismissed her application, and the single remaining applicant was immediately grantable.

Section 1.1111(c)(4) of the Commission's rules, however, provides for refund of a hearing fee only when an application is withdrawn pursuant to a settlement agreement prior to the Notice of Appearance deadline. In the instant case, the applicant's settlement application was filed after the Notice of Appearance deadline, and therefore was untimely. Specifically, the settlement agreement was filed on September 16, 1992, more than 20 days after release of the Hearing Designation Order. See Memorandum Opinion and Order, FCC 92M-988 (Oct. 6, 1992).

The Commission's Memorandum Opinion and Order, FCC 91-154 (released May 15, 1992), which you reference in support of your refund request, is inapplicable. That Order addressed, among other things, when hearing fees must be filed for broadcast applications. The Order did not bear upon, or modify the rules regarding fee refunds.

Under these circumstances, refund of the hearing fee is not appropriate. See 47 C.F.R. § 1.1111(c)(4). Accordingly, your request is denied.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

OCT 29 1992

Susan A. Marshall, Esquire
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

Dear Ms. Marshall:

This will respond to your request for refund of a hearing fee filed on behalf of Rosamond Radio, Inc. ("Rosamond") in connection with its construction permit application for a new FM station at Rosamond, California.

You have requested a refund because, prior to the Notice of Appearance deadline, one of the two competing applicants voluntarily dismissed its application pursuant to a settlement agreement, and the application of Rosamond, as merged with the remaining application, was granted.

Section 1.1111(c)(4) of the Commission's rules provides for a refund of a hearing fee whenever applications are withdrawn pursuant to a settlement agreement prior to the Notice of Appearance deadline, and the remaining application is immediately grantable. Since the settlement agreement was timely filed and Rosamond's application, as merged, was granted refund of the hearing fee is appropriate.

Accordingly, your request is granted. A check, made payable to the maker of the original check and drawn in the amount of $6,760.00, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

S/ THH for

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

OCT 29 1992

Stephen T. Yelverton, Esq.
McNair Law Firm, P.A.
1155 15th Street, N.W.
Suite 400
Washington, D.C. 20005

Dear Mr. Yelverton:

This will respond to your request for refund of a hearing fee filed on behalf of Alexander Snipe, Jr., d/b/a Glory Communications, in connection with its construction permit application for a new FM station at South Congaree, South Carolina.

You have requested a refund because prior to the Notice of Appearance deadline, the other competing applicant voluntarily dismissed its application pursuant to a settlement agreement, and Mr. Snipe's application was immediately grantable.

Section 1.1111 (c) (4) of the Commission's rules provides for a refund of a hearing fee whenever an application is withdrawn pursuant to a settlement agreement prior to the Notice of Appearance deadline. Since the settlement agreement was timely filed and Mr. Snipe's application was granted, refund of the hearing fee is appropriate.

Accordingly, your request is granted. A check, made payable to the maker of the original check and drawn in the amount of $6,760.00, will be sent to Mr. Snipe at his Irmo, South Carolina address at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

OCT 29 1992

OCT 29 1992

Julian P. Freret, Esquire
Booth, Freret & Imlay
1233 20th Street, N.W.
Suite 204
Washington, D.C. 20036

Dear Mr. Freret:

This will respond to your request for refund of a hearing fee filed on behalf of Doris A. Studstill in connection with her construction permit application for a new FM station at Oglesby, Illinois.

You state and your documentation demonstrates that, prior to the Notice of Appearance deadline, the other two competing applicants voluntarily dismissed their applications, and the application of Doris A. Studstill was granted.

Section 1.1111 (c)(4) of the Commission's rules provides for a refund of a hearing fee whenever an application is withdrawn pursuant to a settlement agreement prior to the Notice of Appearance deadline. Since the settlement agreement was timely filed and Doris A. Studstill's application was granted, refund of the hearing fee is appropriate.

Accordingly, your request is granted. A check, made payable to the maker of the original check and drawn in the amount of $6,760.00, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

S/TMH for

Marilyn J. McDermett
Associate Managing Director
for Operations

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 92-469
Washington, D.C. 20554

In the Matter of	)	
	)	
Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them	)	PR Docket No. 92-235

NOTICE OF PROPOSED RULE MAKING

Adopted: October 8, 1992 **Released:** November 6, 1992

Comment Date: February 26, 1993
Reply Comment Date: April 14, 1993

By the Commission: Commissioner Barrett issuing a separate statement.

I. Introduction

1. On July 2, 1991, we released a Notice of Inquiry (Inquiry) to gather information on how to promote more efficient use of the frequency bands below 512 MHz allocated to the private land mobile radio (PLMR) services.[1] Based on the input received in response to our Inquiry, today we are adopting this Notice of Proposed Rule Making (Notice) that contains a comprehensive set of proposals designed to increase channel capacity in these bands, to promote more efficient use of these channels, and to simplify our policies governing the use of these bands by a wide variety of small and large businesses and public safety agencies throughout this nation.[2] The magnitude of these proposed policy changes makes this an ideal time to create Part 88, and thus correct many unrelated deficiencies that exist in our current rules governing the PLMR services. The proposed rules are in many ways radically different from our current rules. We have, however, attempted to develop a new set of rules that are flexible and simple with regard to the technical and operational characteristics of the private land mobile radio services as well as our mechanisms for licensing users in these services.

2. We are convinced that, without significant regulatory changes in the bands below 512 MHz, the quality of PLMR communications will likely deteriorate to the point of endangering public safety and the national economy. In this proceeding, therefore, our goal is to develop a regulatory

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[1] Notice of Inquiry (Inquiry), PR Docket No. 91-170, 6 FCC Rcd 4125 (1991).

[2] Because we received the information we were seeking from the Inquiry, and the scope and focus of this Notice differs from the Inquiry, we have opened a new Docket and will close PR Docket No. 91-170.

scheme that increases channel capacity for PLMR users. We are also sensitive to the need for a reasonable transition period for users to convert their radio systems to newer, more spectrum efficient technologies. These proposals are complex and deserve the full time and attention of all interested parties. In sum, the Notice is a critical step in providing for the future communications needs of private land mobile radio users. We are, therefore, looking forward to their comments and any alternatives that they may have to the proposals we have developed for their consideration.

3. It may be helpful to outline how the proposals in this Notice are presented for consideration. The Notice itself merely presents our proposals in a broad and general form. Readers will find more detail regarding each of our proposals in Appendix A, which explains each major proposal. Readers should also carefully examine Appendix D, the proposed Part 88 that would replace Part 90. To assist in this detailed review, we have provided Appendix E, an index that cross-references proposed rules in Part 88 to current rules in Part 90.

II. Background

4. In the past seven decades, PLMR has become one of the largest, most important areas regulated by the Commission. When making new PLMR spectrum allocations, we have generally been innovative and required or induced industry to be innovative. The rules for the bands in use longest have often been amended, yet remain based on much earlier technologies and regulatory concepts. Many PLMR channels are now unacceptably crowded and our rules for certain bands are unacceptably archaic and convoluted. The Inquiry solicited comments on a wide range of technical and policy issues related to the use of the PLMR bands below 512 MHz, with the overall goal of developing modern rules to support future technologies.

5. We received over 120 comments and reply comments. The Private Radio Bureau, in cooperation with the Annenberg Washington Program, Communications Policy Studies, of Northwestern University, also sponsored a conference on this topic on November 14, 1991. Nearly all the commenters appreciated that the Inquiry was a necessary step for insuring that the long term communications needs of the PLMR community are met. Many comments highlighted the invaluable and irreplaceable need for radio spectrum for one and two-way mobile communications. Most commenters suggested that we proceed immediately to increase spectrum efficiency through technical changes as well as various policy changes. In preparing this Notice, we again carefully reviewed the existing environment, with the goal of determining the best possible regulatory framework.

III. Discussion

6. We propose below a series of major changes in the way we regulate the PLMR services below 512 MHz. There are four major proposals. First, we propose spectrum efficiency standards that should increase the capacity, in terms of number of available channels, of several bands by 300 to 500 percent. These standards would generally reduce channel spacing to 6.25 kHz or less, while at the same time providing technical flexibility. Second, we propose a channel exclusivity option in the bands above 150 MHz. This would

be accomplished using a market-based approach called "exclusive use overlay," which involves achieving exclusivity through concurrence of existing users. We would, in addition, leave a significant number of channels available for licensing on the traditional shared use basis. Third, we propose to consolidate the current 19 radio services. Fourth, we propose new technical and operational standards. For example, we propose significantly reducing permissible transmitting power levels. This would permit efficient geographic co-channel reuse. In addition, we propose to permit centralized trunking, set aside channels for specific operational characteristics, designate channels for new high-technology type of operation, and generally simplify our rules. These changes would greatly expand capacity and improve quality of service, without imposing unreasonable burdens on present or future licensees.

A. Spectrum Efficiency Standards.

7. **Creation of narrowband channels and adoption of spectrum efficiency standards.** A great deal of the Inquiry focused on specific technologies and technical regulation. We asked about a variety of technologies, including trunking, packet radio, spread spectrum, and narrowband.[3] We also discussed the concept of a spectrum efficiency standard, which would require that systems be at least as efficient as some benchmark technology,[4] as a method of providing technical flexibility while at the same time prohibiting spectrum inefficient technologies. Commenters emphasize that our proposals must provide technical flexibility[5] and encourage use of new technologies in the existing bands, particularly in urban markets. The comments clearly indicate that the benchmark technology should be narrowband.[6]

8. Thus, we are proposing a set of spectrum efficiency standards based on narrowband technology. The standards would provide for greater efficiencies over time, moving from the current 25 kHz channel spacing eventually to 6.25 kHz in the 421-430, 450-470 and 470-512 MHz bands and to 5 kHz channel spacing in the 72-76 (for low power mobile operations) and 150-174 MHz bands. The process would occur in two stages, with the first stage requiring existing users to reduce their occupied bandwidth.[7] These proposed standards are designed to promote technical flexibility, allowing the economic

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[3] See Inquiry, paragraphs 26-44.

[4] See Inquiry, paragraphs 101-106.

[5] LMCC urges us "not to mandate any one technology, transmission technique, or system design. Rather, the Commission should adopt rules and policies that would provide land mobile users with substantial latitude in choosing among available technologies and system designs." Comments of LMCC, 5.

[6] See, for example, Comments of LMCC.

[7] The proposed first stage would reduce channel deviation for existing systems, thus reducing noise caused by and to adjacent channel assignments, and facilitating the addition of new channel assignments as soon as possible, without requiring actual replacement of equipment.

and public safety considerations to determine the best technology for each application, while at the same time requiring that PLMR allocations be used efficiently.

9. This proposal is consistent with comments of most frequency coordinators, the Land Mobile Communications Council (LMCC), Motorola, Inc., American Telephone & Telegraph Company (AT&T), and the Telecommunications Industry Association (TIA).[8] In addition, several parties favor spectrum efficiency standards, but not necessarily a channel split.[9] Commenters also indicate they want the option to use 25 kHz Time Division Multiple Access (TDMA) technology.[10] This proposed plan would permit this option.

10. We also propose loading standards that provide existing licensees an opportunity to take advantage of the newly created narrowband channels. Even if they lack the per-channel loading standard, existing licensees could still retain two narrowband channels for every existing channel by implementing this technology at least two years sooner than required. Together with exclusivity, this would provide licensees with an incentive to use narrowband channels as soon as economic and public safety conditions indicate. Thus, additional capacity would become available at a quick and smooth pace. Licensees could fund conversion to narrowband by reassigning part of an existing wideband channel to a party willing to reimburse them.

B. Exclusivity.

11. Creation of a channel exclusivity option. Currently our rules governing the bands below 470 MHz do not provide for channel exclusivity.[11] The Inquiry focused a great deal on the concept of exclusivity, combined with flexible technical standards, as an incentive to promote spectrum efficiency.[12] Most commenters favor some sort of channel exclusivity. The Joint Commenters, for example, state that they "agree wholeheartly ... that exclusive channel assignments provide a strong stimulus for licensees to employ efficient modes of operation."[13] Exclusivity makes technical

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[8] See Comments of American Trucking Association (ATA), LMCC, Motorola, Inc., and TIA. See Comments of the Association of American Railroads (AAR) for an opposing view.

[9] See Comments of AT&T.

[10] See, for example, Comments of LMCC, 13-14.

[11] See 47 C.F.R. § 90.173(a).

[12] Inquiry, paragraphs 51-64.

[13] The Joint Commenters are Special Industrial Radio Service Association, Inc. (SIRSA), National Association of Business and Educational Radio, Inc. (NABER), American Petroleum Institute (API), American Mobile Telecommunications Association, Inc. (AMTA), Telephone Maintenance Frequency Advisory Committee (TELFAC), and Council of Independent Communication Suppliers (CISS). Joint Comments at 10.

flexibility more viable. For example, centralized trunking is currently based on exclusivity. Thus we propose permitting exclusive channel assignments in most of the 150-174 MHz, 421-430 MHz, and 450-470 MHz bands.

12. The Inquiry discussed three methods of converting the bands below 470 MHz to exclusive assignments: stopping new licensing, emptying a band, and exclusive use overlay.[14] Of these three methods of achieving exclusivity, commenters generally opposed the first two plans. Several commenters, however, specifically favor the exclusive use overlay plan.[15] Thus we propose that exclusivity would be achieved through an exclusive use overlay (EUO) plan similar to that discussed in the Inquiry.[16] Our proposal would permit a temporary freeze of licensing on specific channels at specific locations if applicants obtain sufficient concurrence from existing large (as defined by loading criteria) licensees. If concurrence of all large licensees is achieved, then we would permanently freeze licensing, i.e., no additional use of that channel within 50 miles would be permitted without concurrence of the EUO licensee.[17] Thus, the EUO option is an opportunity to obtain exclusivity. Several other commenters favor converting de facto exclusive licenses to actual exclusive licenses.[18] Our proposal, including its preferences to existing licensees, achieves that goal.[19] Other licensees favor use of loading standards, as at 800 MHz.[20] Our proposal applies loading criteria, but in a different manner.

13. Several frequency coordinators request that exclusivity be administered through them. AAR, for example, claims that exclusive assignments can better be achieved through coordination. These proposals would leave frequency coordinators with a major role in administering exclusivity. The standards for exclusivity, however, must be determined through the rule making process. If user groups have a need to be provided a greater degree of exclusivity for certain types of systems, then they should

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[14] Id., paragraphs 52-64.

[15] See, for example, Comments of LMCC, and National Telecommunications and Information Administration (NTIA). Advanced Mobilecomm, Inc. (AMI) also proposed a plan similar to this one, although they did not specifically comment on exclusive use overlay. See Comments of AMI.

[16] See Inquiry at paras. 65-69.

[17] Existing users would, however, be allowed to remain on the channel on a co-primary basis and will be allowed to add new mobiles.

[18] See, for example, Comments of California Public-Safety Radio Association.

[19] We also propose that until February 1, 1996, EUO applications would only be accepted from existing licensees.

[20] See Comments of ATA.

explicitly state what the standards and eligibility requirements for expanded protection should be.[21]

C. Radio Services.

14. **Consolidation of the Private Land Mobile Radio Services.** The Inquiry discussed the possibility of consolidating the present 19 PLMR services or increasing intercategory sharing.[22] We pointed out that channel utilization is not consistent across the 19 user groups. A study of our licensing database in April, 1992, showed very wide variations in usage, often exceeding factors of ten for channels in the same frequency band designated for different radio services. We also noted that "the current allocation system ... inhibits spectrum efficiency by making certain spectrum efficient technologies more difficult to implement."[23]

15. The Inquiry also discussed the merits of private carriers. We noted that the "private carrier option may be a practical method of making spectrum efficient communications services available to small licensees"[24] and that "[p]rivate carriers have more incentive to enhance spectrum efficiency...."[25]

16. Consolidation of service pools generated the widest range of comments to the Inquiry.[26] Several frequency coordinators oppose a proposal to consolidate the current radio services[27] on the grounds that current interservice sharing rules[28] work. They are supported in their views by licensees within these service categories. On the other hand, the Joint Commenters, Associated Public-Safety Communications Officers, Inc. (APCO) and Utilities Telecommunications Council (UTC) all generally favor consolidation.[29] Together, these three sets of comments represent over 75

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[21]For example, we propose protecting systems for which failure of their PLMR system would create an imminent danger to the public safety. This would provide automated railroad systems protection that we believe to be necessary.

[22]Inquiry, paragraphs 78-88.

[23]Id., paragraph 85.

[24]Id. paragraph 91.

[25]Id. paragraph 92.

[26]LMCC states that this subject "has been the subject of lively debate within the LMCC." Comments of LMCC at p. 23.

[27]See, for example, Comments of Forest Industry Telecommunications (FIT).

[28]47 C.F.R. § 90.176.

[29]See Joint Comments, Comments of APCO and UTC. APCO is less firm on this issue, generally recognizing that it is a reasonable step, but noting problems such as users having confidence in the coordination system. UTC

percent of the licensed transmitters in the affected bands, plus all the licensed PLMR activity above 800 MHz. The Joint Commenters note that, "[w]ithout such a consolidation, the industry may find it cumbersome to implement spectrum efficient technologies ... in the bands below 470 MHz."[30] These commenters also maintain that the current interservice sharing rules do not provide adequate relief to an applicant to obtain channels allocated to other service pools because the system is expensive, time-consuming, and burdensome to the applicant, and typically does not provide the applicant the needed spectrum.[31] Numerous other parties favor consolidating radio pools. The State of California states that the "current practice of allocating specific frequency bands to the unique divisions of public safety ... causes complications in areas where some bands are underutilized, while others are overcrowded."[32]

17. Based on the comments, we believe that some consolidation of the current alignment of radio services may be necessary to realize the maximum benefits of the PLMR spectrum. We thus propose two specific alternatives in this proceeding, both of which are designed to protect all existing users, to assure a smooth transition that minimizes cost to users, and to promote flexibility. Specifically, we propose either to (1) consolidate the current radio services into three broad categories (Public Safety, Non-Commercial and Specialized Mobile Radio) plus a General Category Pool encompassing all three services, or (2) retain the current services and assign to those services their existing frequency assignments but assign all new frequencies to the proposed new broad categories and the General Category pool. The rules proposed in Appendix D present a model based on consolidating the existing services into the three broad service categories, which provides a picture of what a new Part 88 would look like under one set of assumptions. We want to emphasize, however, that we do not have a preference for either of the alternatives set forth herein. Rather, we invite comment on both proposals as well as any other alternative that will fulfill the goals and objectives of this proceeding. Commenters offering alternatives should provide, to the maximum extent possible, the text of specific rules to implement their proposal.

18. **Frequency coordination.** We propose that frequency coordinators continue to play a major role in managing the PLMR spectrum. We propose that if we adopt option 1 from paragraph 17 above, Public Safety Radio Service applicants would be permitted to use any of the current public safety frequency coordinators. Non-Commercial and General category applicants could

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favors consolidation, but recommends different services from those that we are proposing.

[30]Joint Comments at 16.

[31]Joint Comments, n. 23.

[32]Comments of State of California, 9.

use any recognized frequency coordinator.[33] We propose that if we adopt option 2, channels designated for the current 19 narrow radio services would continue to be coordinated only by their current coordinator. Channels designated for the Public Safety Radio Service could be coordinated by any of the existing coordinators for the public safety radio services, and channels designated for the Non-Commercial Radio Service and General Category Pool could be coordinated by any recognized frequency coordinator. Finally, above 800 MHz APCO, NABER and SIRSA would coordinate the same channels they currently coordinate.

19. Currently, frequency coordination is a process in which each applicant was given the best assignment possible. In the future, frequency coordinators should strive to retain as large a spectrum reserve as possible. For example, frequency recommendations should place systems as close geographically as possible without causing interference. Small systems not qualifying for an EUO preference should be stacked on the same channel (vertical loading), rather than be assigned separate channels (horizontal loading).

D. Technical and Operational Rule Changes.

20. Adopt reduced ERP and HAAT Limits. The Inquiry requested comments on reducing the maximum permitted transmitter power levels.[34] We noted the advantages of greater reuse of spectrum over geographic space. Many commenters favor some method of limiting emissions, recognizing that many current licensees use far more power than necessary. The State of California cites "a small town of three square miles operat[ing] 250 watt base stations."[35] Public safety entities tended to favor service area contours rather than simple power limits.[36] A 75 watt power limit was recommended by various Land Transportation frequency coordinators.[37] As they point out, the railroad, taxi, and trucking industries all have needs as complicated and critical as most users. Users in these services have all found 75 watts to be an acceptable power limit.[38] Use of high gain antenna systems can, however,

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[33]This would prevent applicants from being forced to go to non-representative entities for frequency assignment recommendations, as opposed in the numerous reply comments by state highway departments. See, for example, Reply Comments of the New York State Department of Transportation.

[34]Inquiry, paragraphs 96-100.

[35]Comments of State of California, 6.

[36]See, for example Comments of the State of Washington, Washington State Patrol.

[37]See for example Comments of AAR.

[38]Power levels on many channels would not be substantially reduced. For example, there are many channels available to Business Radio Service licensees in the 460-470 MHz band with a 110 Watt power restriction. See 47 C.F.R. § 90.75(b) and (c).

result in overly powerful systems. Thus, we propose for the 150-174 and 450-470 MHz bands reducing the standard limits on effective radiated power (ERP) to 300 watts, with lower ERP limits for systems with antenna heights above average terrain greater than 60 meters.[39] This proposal is closely tied to our exclusive use overlay proposal because it would enable us to propose co-channel separations of 50 miles, rather than the 70 mile separation used in the bands above 800 MHz.[40]

21. **Providing for alternative operations.** Although a main focus of this Notice is the creation of a large number of exclusive use channels, we also propose that applicants be offered a full array of options. For example, the entire 25-50 MHz band and a number of channels in the 150-174 MHz and 450-470 MHz bands will not include a channel exclusivity option. Furthermore, our proposed rules would provide for alternative types of systems, such as low power, itinerant wide-area, and mutual aid operations. Finally, we propose a set of channels in the 150-162 MHz band be set aside for large innovative operations.

22. **Promotion of interoperability.** Interoperability is a key concern of public safety entities. The work of APCO-25 is discussed by several commenters.[41] The initial output of this committee will be digital standards using 12.5 kHz channels. Agencies in various jurisdictions must be able to communicate with each other. Although we are not proposing to mandate such standards, we might eventually propose standards on mutual aid channels. This would provide an impetus for de facto standardization, yet still permit competing technologies.

23. **Designation of Channels for Innovative Shared Use.** We propose designating 258 channel pairs in the 150-162 MHz band for innovative, highly spectrum efficient radio systems. Although we request a full range of comments concerning use of these channels, we propose that most of these channels be designated as shared use voice/data channels, with a very limited number of channels assigned on an exclusive basis for control purposes.[42] Licenses would be made available in seven regions using lotteries. Licensees would be required to update the technology used in their systems periodically to increase its spectrum efficiency. Thus, this proposed operation would serve as a base for technical innovation that could be used by other PLMR

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[39]Systems requiring greater geographic coverage could build additional sites.

[40]ATA indicates reassignment of a channel after 50 miles was a reasonable goal. Comments of ATA, 10.

[41]APCO-25 is a committee of representatives of federal, state and local public safety agencies which, together with manufacturers, is developing digital standards for use in public safety mobile radio systems. See, for example, Comments of County of Orange, California, and Motorola Inc.

[42]This type of operation was suggested by Fred W. Daniel. Comments of Fred W. Daniel.

licensees. As an alternative, we propose issuing five 50 channel exclusive use licenses per region.

24. **Permitting trunked operations.** A trunked system is a multi-channel system in which a user can transmit on any of the channels through specific base station facilities. The system automatically searches for and assigns a user an open channel assigned to that system. Trunked technology provides significantly more efficient use of the radio spectrum in terms of the number of users that can be supported.[43] Centralized trunking is not currently permitted in the bands below 800 MHz.[44] The vast majority of commenters favor permitting centralized trunking when a licensee has at least de facto exclusivity. Thus, we propose that centralized trunking immediately be explicitly permitted where exclusivity is recognized by the Commission or when all co-channel licensees within 50 miles concur.

E. Miscellaneous Proposals.

25. **Modification of Existing Systems.** A key concern to many commenters is that current licensees be given sufficient time to amortize the cost of existing equipment prior to the date that narrowband equipment is mandated.[45] Adjustments to existing systems would, however, accelerate implementation of narrowband and other spectrum efficient technologies. The Joint Commenters state that "it appears that the reduction in transmitter deviation can be accomplished without great expense through a combination of manual adjustment of existing equipment and software."[46] Thus, we propose requiring certain changes to existing systems. All existing systems between 150 and 512 MHz would be required to reduce their transmitter deviation to no more than 3 kHz and meet the new power limitations by January 1, 1996.

26. **Retaining offset channels in the 450-470 MHz band.** Between the primary channels in the 450-470 MHz band are channels offset by 12.5 kHz, generally available on a secondary basis for low power mobile operations.[47] These channels are heavily occupied and are considered essential by several commenters.[48] We propose that these channels remain licensed on a secondary basis. Their bandwidth would also be subject to the general spectrum

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[43]See Future Private Land Mobile Telecommunications Requirements: Final Report, Planning Staff, Private Radio Bureau, FCC, Washington, D.C., August 1983.

[44]Decentralized trunking is, and would continue to be permitted. See Inquiry at para. 27.

[45]See, for example, Comments of Forestry Conservation Communications Association (FCCA), 8.

[46]Joint Comments at n. 16.

[47]See 47 C.F.R. § 90.267.

[48]See, for example, Comments of Hewlett-Packard Company Products Group (HP).

efficiency requirements.[49] These channels would be available in the Public Safety Radio Service and the General Category Pool. In addition, we would permit, without a separate authorization, very low power (20 mW or less) telemetry operations on additional offset channels in the 450-470 MHz band. We believe these proposed changes, particularly taken in conjunction with the general proposed ERP limitation will, for example, help serve the significant spectrum needs for such low power operations.[50]

27. **General simplification of Part 90.** Our proposed rules, renamed Part 88, are generally much simpler and clearer than current rules. Some of the proposed changes are a) eliminating the majority of footnotes to frequency tables, b) improving the glossary, c) adding an index, d) consolidation of many grandfathering provisions, e) radiolocation as an operation rather than a radio service, f) consolidating Subparts L, S, and T into the main sections of Part 88, and g) making a general editorial reorganization.

IV. Conclusion

Initial Regulatory Flexibility Analysis

28. An Initial Regulatory Flexibility Analysis is contained in Appendix B to this Notice of Proposed Rule Making. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981).

Paperwork Reduction Act Statement

29. The proposals contained in this Notice have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to decrease the burden imposed on the public by eliminating the option for multiple licensing, and to impose an additional burden on licensees seeking to convert their frequencies from shared use to exclusive use by requiring a proposed form to be filed. Whether the proposal is viewed as a decrease, increase or modification of existing collection burdens, it is subject to approval by the Office of Management and Budget as prescribed by the Act.

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[49] Thus, these would become 6.25 kHz wide channels offset 3.125 kHz from the full power channels.

[50] See Comments of HP and Spacelabs.

Ex Parte Rules - Non-Restricted Proceeding

30. This is a non-restricted notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

Comment Dates

31. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before February 26, 1993, and reply comments on or before April 14, 1993. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, DC 20554.

Ordering Clause

32. Authority for issuance of this Notice of Proposed Rule Making is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r).

Contact Person

33. For further information about this Notice, contact Doron Fertig, Private Radio Bureau, (202) 632-6497 or for technical issues, Eugene Thomson, Private Radio Bureau, (202) 634-2443.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

PROPOSED RULES DISCUSSION

This Appendix discusses the major proposed rule amendments that we propose to adopt to improve spectrum efficiency in the PLMR bands below 512 MHz.[1]

Appendix D sets forth the proposed Part 88 in its entirety, along with editorial changes to subpart F of Part 1. A table cross-referencing the current rules and the proposed rules appears in Appendix E. Because this proceeding replaces Part 90 in its entirety, the table will facilitate analysis by the public commenting on the proposed rules.

MAJOR PROPOSALS

Channel Spacing.

Our primary proposal is to reduce channel spacing in the spectrum between 72 and 512 MHz. We propose to reduce channel spacing to 5 kHz for low power mobile frequencies in the 72-76 MHz and for all frequencies in the 150-174 MHz bands. We also propose to reduce channel spacing in the 421-430 MHz, 450-470 MHz and 470-512 MHz bands to 6.25 kHz.[2] All new assignments would be required to use this narrowband technology. See Appendix D, § 88.413(b)(6).

Transition Period.

At 421-512 MHz, we propose to require existing users to reduce transmitter frequency deviation to reduce occupied bandwidth to 10 kHz by January 1, 1996.[3] Thus, three channels would be created from every existing channel. A 12.5 kHz channel would be centered on the original channel's center frequency and be licensed to all existing users. The other two channels would be 6.25 kHz wide, spaced just above and below the 12.5 kHz channel, and would be available for new users. We also propose requiring all users in the 421-512 MHz band to employ 6.25 kHz equipment by the dates set in the proposed § 88.433. Thus, existing users would be required to temporarily

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[1]Minor rule changes (rules that we propose to delete because they are redundant or unnecessary, or that are changed in format or style, reworded or renamed, or only reflect non-substantive changes) are not discussed in this Appendix. The reader should closely examine Appendix D and Appendix E to ascertain these minor changes.

[2]We propose different channel spacing in different bands to minimize transition costs to existing users. The 6.25 kHz channelization is as or more efficient than the 5 kHz because the 6.25 kHz channelization permits the creation of over 1700 additional offset channels for low power use in the 450-470 MHz band.

[3]Adjacent channel interference protection would not be provided. To avoid such problems, licensees should reduce the bandwidth of their receivers.

adopt pseudo-12.5 kHz equipment.[4] They would then gradually replace their equipment with true 12.5 kHz equipment that could later be modified to further reduce occupied bandwidth. Finally, existing users would move their carrier frequency either up or down 3.125 kHz and continue operation on either or both of the new 6.25 kHz channels.[5] See Appendix D, § 88.413(b)(6).

At 150-174 MHz, we propose to require existing users to reduce transmitter frequency deviation to reduce occupied bandwidth to 12 kHz by January 1, 1996. This would reduce adjacent channel noise and permit us to eliminate adjacent channel mileage separations (thus, increasing assignable channels by approximately 20% in most urban markets). We also propose requiring all licensees in the 150-174 MHz band to employ 5 kHz equipment by the dates shown at § 88.433. The new 5 kHz channels would be centered at the existing channels, plus 5 kHz above and below the current channel centers. Existing licensees could remain on one or two of the three channels created from the channel for which they were originally licensed.[6] The other channel would be designated for innovative shared use operations. See Appendix D, § 88.413(b)(6).

Finally, we propose to require existing users in the 72-76 MHz band to reduce transmitter frequency deviation to reduce occupied bandwidth to 10 kHz by January 1, 1996. Thus, three channels would be created from every existing channel. A 10 kHz channel would be centered on the original channel's center frequency and be licensed to all existing users. The other two channels would be 5 kHz wide, spaced just above and below the 10 kHz channel, and would be available for new users. We also propose requiring all users in the 72-76 MHz band to employ 5 kHz channels by the dates set in proposed § 88.433. See Appendix D, § 88.413(b)(6).

The channel split proposal is a critical element of this Notice. We request comment on each aspect, including the ultimate channel size in each band (5 kHz and 6.25 kHz), whether the channel split should be done in two steps as proposed or one step, the dates of the proposed steps, the specific allotments, and the distribution among new and existing users. In particular, should we adopt a two phase plan leading to 5 kHz channelization between 421 and 512 MHz, where the first phase splits the current channels into a 15 kHz channel, with two 5 kHz channels, spaced just above and below the 15 kHz channel?

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[4]For the purpose of this proceeding, we will consider minor changes made to a transmitter's modulation stage to achieve reduced bandwidth as a Class I permissive change under the provisions of § 2.1001(b)(1).

[5]A licensee can only keep the lower 6.25 kHz channel pair if they convert to narrowband technology at least two years before the deadline specified in the proposed § 88.433. See Appendix D, § 88.281.

[6]A licensee can only keep the upper 5 kHz channel if they convert to narrowband technology at least two years before the deadline set in proposed § 88.433. See Appendix D, § 88.281.

Technical Standards.

The proposed channel splitting in the frequency bands below 800 MHz will result in narrower channel spacings that require new technical standards. These proposed standards are simpler and more flexible than those they replace.

Channel Bandwidth.

We propose occupied bandwidths of 4 kHz and 5 kHz for frequency bands with channel spacing of 5 kHz and 6.25 kHz, respectively. We also propose appropriate channel bandwidths for the transitional stage. Because modulations other than frequency modulation may be utilized, frequency deviation limits are no longer specified. Following industry standards, transmitter frequency stability is now specified in parts per million (ppm) rather than in percent of the carrier frequency. See Appendix D, §§ 88.413(b)(6) and 88.425.

Spectrum Efficiency Standards.

We propose new spectrum efficiency standards that would permit use of non-standard bandwidths provided that such use is at least as efficient as narrowband technology. These proposed spectrum efficiency standards are intended to increase technical flexibility. An important aspect of these rules is that the proposed § 88.433(d) contains the deadlines for existing systems to completely convert to narrowband equipment. See Appendix D, § 88.433

Emission Masks.

We propose two new emission masks. The first is for transmitters operating on frequencies with 5 kHz spacing in the 72-76 MHz band designated solely for low-power mobile use, and also for transmitters operating on frequencies in the 150-174 MHz or 216-222 MHz bands. The second mask is for transmitters operating on frequencies with 6.25 kHz spacing in the 421-512 MHz band. Both of the proposed masks are based on the mask developed for the 5 kHz channels in the 220-222 MHz band. The masks are designed to provide 40 dB of attenuation at the edge of the authorized channel, 50 dB attenuation at the edge of the authorized bandwidth of the adjacent channel, and 65 dB of attenuation thereafter. Because the technical flexibility afforded licensees could result in the use of non-standard wide-band channels, mask attenuations are specified from the edge rather than from the center of the authorized bandwidth. See Appendix D, § 88.421.

Licensing of Channels.

Spectrum below 470 MHz is currently licensed on a shared basis. We propose to continue to license some channels on a shared basis only and to make other channels available for exclusive licensing under specified circumstances. We also propose to set aside a number of channels for innovative shared use among a limited number of licensees. Each of these proposals are forth in specific headings below.

Shared Use Channels.

We propose to set aside 90 base station channels in 150-174 MHz and 450-470 MHz for shared use under our current assignment policies.[7] Specifically, we propose to set aside a number of frequencies in the General Category Pool. In the 450-470 MHz band 45 narrowband channel pairs created from the first step of the channel split would be set aside. In the 150-174 MHz band, 45 shared use frequencies would be derived from Business Radio Service frequencies spaced every 30 kHz (rather than the current standard 15 kHz).[8] See Appendix D, § 88.667.

Innovative Shared Use Radio Operations.

We propose granting five licenses in each of 7 regional markets[9] for a new type of shared use radio operations. See Appendix D, §§ 88.997-88.1009. Each of these licensees would be assigned two channel pairs for system control purposes on an exclusive basis. See Appendix D, § 88.1001. Approximately 250 channel pairs in the 150-162 MHz band would be shared for voice/data communications. See Appendix D, § 88.999. By monitoring the limited number of control channels, each licensee could easily identify which voice/data channels are currently in use and which are available for its use.. See Appendix D, § 88.1009. We propose a large service area to provide maximum operational flexibility.

We propose no co-channel separation requirements, and instead will rely on the shared nature of the service to minimize interference and, in cases where problems do arise, recommend licensees to use alternative dispute resolution methods. If the alternative dispute resolutions fail or one or both parties to the interference complaint choose not to use such methods, the licensees may file a complaint with the Commission. We would use two guiding principles in resolving such cases: 1) all innovative shared use licensees must cooperate with each other; and 2) the last licensee to construct will be responsible to correct the problem. If appropriate, we would set up a formal hearing and charge appropriate fees. We may also require an intermediate resolution, including that both licensees cease operations until the complaint is resolved. See Appendix D, § 88.1009.

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[7]In addition, the entire 25-50 MHz band, and an increased number of low power channels will also be assigned on the current shared basis. Finally, we are also increasing the number of itinerant frequencies, which are also available for shared use.

[8]On January 1, 1996, existing 150-174 MHz Business Radio Service licensees operating on 30 kHz channels must reduce occupied bandwidth to 12 kHz (i.e., to a 15 kHz channel), thus creating three new narrowband channels in addition to the 15 kHz channel for existing users. Eventually the remaining 15 kHz channel would be converted to three 5 kHz channels.

[9]The markets would be those used for the Regional Bell operating companies.

We propose that sharing for this type of operation generally be limited to five licensees per market. It may be difficult to efficiently monitor more control channels. We do, however, propose that additional grants could be made if enough existing licensees provide concurrence. See Appendix D, § 88.1007. The preferable alternative would be competitive bidding, but we lack legislative authority. Thus, we propose that the five licenses per market be lotteried. To limit speculative behavior, we propose limiting eligibility to existing licensees (10 base stations in any radio service in the region applied for) of reasonable size ($1,000,000 in sales or expenditures per year). We seek comment on specific measures of experience and on the proposed minimum size requirements. We leave the issue of whether wireline telephone common carriers should be eligible for innovative shared use licenses to a future proceeding covering wireline eligibility in all bands, including the 220-222 MHz, 851-866 MHz and 935-940 MHz bands. We seek comment on more flexible eligibility requirements that would open access to any bona fide applicant who can demonstrate financial qualifications and the ability to operate the system. See Appendix D, § 88.1005. The license term would be ten years. See Appendix D, § 88.119(d). The application fee would be based on the number of channels and the minimum number of base stations.

We propose construction of a specific number of channels at the end of the first and second 10 year license terms. The number of required channels at the end of the first term is not the full set of channels because the full set of channels will not become available until 2004-2012 depending on the market. Licensees have at least two solutions to the problem of channel availability. First, innovative shared use radio operations eligibles could free their assigned channels by financing other licensees in the 150-174 MHz band to convert to narrowband equipment sooner than the deadlines specified at § 88.433. Second, innovative shared use radio operations licensees could purchase channels from other licensees. See Appendix D, §§ 88.1003 and 88.1013.

We propose that starting with the second license term, innovative shared operation licensees be required to improve spectrum efficiency by the end of each license term. We believe that many alternatives will exist to generate these improvements. For example, phased array antenna systems should be available on a commercial basis even before we could begin licensing this new type of operation. See Appendix D, § 88.1015.

We also seek comments on an alternative proposal to divide the same channels into five blocks of approximately 50 channels for exclusive assignment to five licensees in each region. Although each licensee would have access to fewer channels with this approach, each licensee would have more flexibility and a greater incentive to use their spectrum efficiently.[10] For example, licensees could implement advanced technologies or provide different grades of service, e.g., blocking, without having to coordinate with each other.[11]

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[10] See Notice, paras. 52-53.

[11] Mandatory technology upgrades might not be required under this approach.

Finally, we would not accept applications for this type of operation until at least January 1, 1996. When we are ready to accept such applications, we will issue a Public Notice providing at least 30 days notice for a one day filing window.

Exclusive Channels.

We propose to allow applicants and licensees to convert currently shared use channels and new channels (except those continuing to be used on a shared basis only) to exclusive use channels if loading justifies such conversion. To convert currently shared use channels to exclusive use, we propose a marketplace mechanism, called exclusive use overlay (EUO), that will provide applicants/licensees the opportunity to obtain exclusive use of channels below 470 MHz.[12]

Exclusive Use Overlay (EUO).

Exclusive Use Overlay (EUO) is a marketplace mechanism that gives licensees with sufficient loading the opportunity to protect their radio environment by converting currently shared use channels to exclusive use channels. See Appendix D, § 88.179. The licensee would be required to file an EUO request with a frequency coordinator. The EUO request may take one of two forms. First, if the licensee has the concurrence of all large co-channel licensees (as defined by loading)[13] within 80 km (50 mi), the licensee would be given an EUO license and no new licensees would be added to the channel.[14] [15] See Appendix D, § 88.203. Second, if the licensee does not have concurrence from all the co-channel licensees needed, but has at least one-half of the necessary concurrences, we will freeze new licensing on the channel in the particular geographic area for 120 days to give the applicant the opportunity to continue its efforts to convert the channel to exclusive use. See Appendix D, § 88.195.

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[12]There is already a mechanism (loading limits) for exclusive channel assignments in the 470-512 MHz band. See 47 C.F.R. § 90.313.

[13]We also propose that as an alternative to being large, a licensee may make a showing that failure of the licensed system would create an imminent danger to the public safety. For example, failure of certain railroad radio systems could directly lead to accidents.

[14]Existing licensees could continue adding mobile units.

[15]We propose that exclusivity over a channel mean the entire assignment. Thus, until January 1, 1996, the day bandwidth by existing users must be reduced, an EUO licensee authorized for a channel in the 450-470 MHz band using the current bandwidth would be protected from new 6.25 kHz narrowband assignments on channels listed in Subpart D removed from the current center frequency by 3.125 or 9.375 kHz. After January 1, 1996, the EUO licensee would be protected from new assignments only on frequencies removed from the center frequency by 3.125 kHz.

EUO Eligibility.

We propose that an applicant for a channel without current licensees must meet the loading requirement within 8 months of its authorization. This proposal is consistent with our current rules and would reduce opportunities for speculation. A licensee with less than the loading limit would not have its authorization cancelled, but rather would be subject to additional loading on the channel. Frequency coordinators would be instructed to recommend lightly loaded channels, reserving unused channels for those later applicants that may be able to justify exclusivity. In particular, we seek comment on what rule changes, if any, should be made to deter channel speculation by SMRs in the 460-470 MHz band once empty narrowband channels become available on January 1, 1996.

We do not propose specific loading levels if the EUO applicant receives concurrence from some licensee with an EUO preference. This is because the concurrence requirement should be sufficient to insure that the EUO licensee will make use of the spectrum.

If there is no existing licensee on that channel in the appropriate geographic area large enough to qualify for an EUO preference, then in addition to loading, we would require that the EUO licensees's system be narrowband (or just as spectrum efficient). Thus, if a current channel in the 150-174 MHz in Chicago area has many users, but none with 50 or more mobiles, then an applicant for EUO license would have to have at least 50 mobiles per channel, plus use narrowband (5 kHz) equipment. In the case of an existing licensee this would require increasing the number of mobiles and converting the existing system to narrowband equipment within 6 months of the grant of the EUO license. See Appendix D, § 88.79.

Additional Channels, Spectrum Efficiency Standards and EUO.

The proposed rules include provisions to inhibit speculative licensing (see Appendix D, § 88.187(b) and (c)). An existing system receiving EUO rights would not have to implement spectrum efficient technology in advance of general deadlines unless the licensee were to obtain additional channels. The proposed rules specifically prevent various techniques, including use of management contracts, from circumventing this spectrum efficiency requirement. See Appendix D, § 88.207.

Loading Criteria in the 150-174 MHz and 450-470 MHz bands.

We propose loading criteria for the bands below 470 MHz that are different from those above 800 MHz. Specifically, we propose three categories. The first category (70 mobiles per channel) would include only New York and Los Angeles. The second (50 mobiles per channel) would cover 73 geographically broad markets. This second category would probably include the majority of all applications. The third (20 mobiles per channel) would cover the rest of the country. The proposed criteria are generally lower than those above 800 MHz primarily because these loading criteria would be established for different purposes than the loading criteria for systems above 800 MHz. For example, these loading criteria do not guarantee exclusivity. Loading would be used for two purposes under the EUO proposal. First, loading would

be a measure of whether a licensee is large enough to qualify for an EUO preference. Second, loading would be used as justification for keeping more than one of the channels created by replacing their existing channel with narrowband assignments.[16] See Appendix D, § 88.273.

EUO Wide-Area Systems.

The loading criteria discussed in the previous paragraph only directly cover single-site systems, but many PLMR users require multiple sites. Thus, we propose two wide-area system options. The first is identical to the current option for the bands above 800 MHz. Under that option, for a licensee meeting certain eligibility criteria, each mobile would be counted at every site. Under the second option, which would be available to all licensees, loading criteria would be essentially proportional to the total geographic area protected from further licensing when each site is provided the standard 80 kilometer protection.[17] See Appendix D, § 88.277.

Loading Criteria in the 470-512 MHz Band.

We propose simplifying loading in the 470-512 MHz band in two respects. First, loading now varies according to radio service. We propose fewer categories. Second, loading is now used to cap channel usage in a 20 or 40 mile radius, depending on the urban market and frequency.[18] We propose that loading be used to cap licensing in the entire urban market. See Appendix D, § 88.293.

Private Land Mobile Radio Services.

Currently there are 21 PLMR services, 19 of which are the focus of this Notice. These services are five current plus one proposed Public Safety Radio Services (Local Government Radio Service, Police Radio Service, Fire Radio Service, Highway Maintenance Radio Service, Forestry-Conservation Radio Service, plus the Emergency Medical Radio Service proposed in PR Docket No.

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[16]Keeping more than one channel under these proposals should not be equated with "having" those channels, as this concept would apply for trunked systems above 800 MHz, because exclusivity is a separate issue.

[17]For example, we propose providing a single site system with an EUO license protection from additional licensing within an 80 kilometer radius, thus providing protection in an approximately 20,000 square kilometer area. Consider a ten-site wide-area system, with each site receiving 80 kilometer protection, with sufficient overlap in the protection areas of the individual sites so that the total area protected is 100,000 square kilometers. The loading criteria for that ten-site wide-area system would be five times that of a single site system.

[18]See 47 C.F.R. § 90.313(c).

91-72), the Special Emergency Radio Service,[19] nine Industrial Radio Services (Power Radio Service, Petroleum Radio Service, Forest Products Radio Service, Video Production Radio Service, Relay Press Radio Service, Special Industrial Radio Service, Business Radio Service, Manufacturers Radio Service, Telephone Maintenance Radio Service), and four Land Transportation Radio Services (Motor Carrier Radio Service,[20] Railroad Radio Service, Taxicab Radio Service, Automobile Emergency Radio Service), in addition to the Radiolocation Radio Service and the Specialized Mobile Radio Service.

As indicated in the text of this Notice of Proposed Rule Making, we propose to either consolidate these radio services into three broad categories (Public Safety, Non-Commercial, and Specialized Mobile Radio Service) plus a General Category Pool encompassing all three broad categories, or retain the current radio service categories and assign to those services their existing frequency assignments but assign all new channels to the proposed three broad categories and the General Category Pool. We do not favor either of these alternatives. We believe, however, that some consolidation is necessary to achieve the maximum benefits from the PLMR spectrum and from the other changes proposed in this Notice of Proposed Rule Making. While the proposed Part 88 and the underlying basis for the broad range of proposals contained herein is predicated on one set of assumptions keyed to consolidating the services into three categories and a general frequency pool, we invite comment on all alternatives that will assist us in writing regulations that maximize the benefits of the PLMR spectrum below 512 MHz.

Public Safety Radio Service.

We propose to create the Public Safety Radio Service, which would merge six current and proposed PLMR services. This would be the only service with significant eligibility requirements. Frequencies below 470 MHz designated for this service may be coordinated only by the current certified public safety coordinators. Public safety eligibles would also be eligible in the other proposed services. See Appendix D, §§ 88.13 and 88.613.

Non-Commercial Radio Service.

We propose to merge the services in subparts C, D and E of Part 90 (generally covering Industrial/Land Transportation) into the Non-Commercial Radio Service. Eligibility in the Non-Commercial Radio Service would be for entities seeking to operate a system for the licensee's internal use. There

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[19]The Special Emergency Radio Service has ten diverse eligibility categories: Medical, Rescue organizations, Physically handicapped, Veterinarians, Disaster relief organizations, School buses, Beach Patrols, Establishment in isolated areas, Communications standby facilities, Emergency repair of public communications facilities.

[20]The Motor Carrier Radio Service also breaks down into Interurban Passenger, Interurban Property, Urban Passenger and Urban Property.

would be no multiple licensing option for this radio service,[21] although limited selling of excess capacity would be permitted. The proposed rules on management contracts and excess capacity are intended to prevent systems being used to circumvent limits on SMRs use of Non-Commercial Radio Service frequencies. Channels for this radio service would include most of those in subparts C, D and E.[22] Frequencies below 470 MHz designated for this service may be coordinated by any certified coordinator. Above 800 MHz, this service would replace the Industrial/Land Transportation Pool. We expect that such a change would be non-substantive. See Appendix D, §§ 88.15 and 88.617.

Specialized Mobile Radio (SMR) Service.

We propose that all private carriers be called SMRs. The only channels specifically designated for SMRs would be those currently designated for their use above 800 MHz (and in the 220-222 MHz band for nationwide licenses). See Appendix D, §§ 88.17 and 88.621.

General Category Pool.

We propose to create the General Category Pool. This pool would be available both to licensees operating their own radio systems and to private carriers. The channels for this pool would come from the Business Radio Service, except those designated only for airport or central alarm station use. All currently certified frequency coordinators would be able to provide coordination services for the new General Category Pool (for frequencies below 470 MHz). The main changes above 800 MHz would be to eliminate additional quasi-commercial operations such as community repeaters, instead requiring such systems to be licensed as SMRs. Existing community repeaters could continue operation and add additional users (unless in conflict with an EUO license). See Appendix D, §§ 88.21 and 88.625.

Interservice Sharing of Frequencies in the 150-174, 421-430 and 450-470 MHz Bands.

We propose that SMRs be given limited entry into Non-Commercial Radio Service channels. Significantly, we would limit SMRs to reassignments of channels licensed and operated by long standing bona fide Non-Commercial or Public Safety licensees. Thus, these provisions would permit some expansion by SMRs where General Category frequencies are exhausted, yet preserve the option for individual users to own and operate a system for internal communications requirements. See Appendix D, § 88.309.

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[21]Existing community repeaters could operate indefinitely, including adding additional users.

[22]Certain channels currently allocated to the Business Radio Service would be allocated to the General Category Pool. All entities eligible for the Business Radio Service would be eligible for the Non-Commercial Radio Service.

Transmitter Power/Antenna Height.

In the 150-174 MHz and 450-470 MHz bands, we are proposing a maximum authorized transmitting effective radiated power (ERP) of 300 watts for stations with an antenna height above average terrain of up to 60 meters (197 ft), with power reductions for increasing antenna heights. We have assumed desired/undesired signal strengths of 37/27 dBu, and the power/height limitations should enable frequency reuse at approximately 80 km (50 mi). The power limitations at high elevation antenna sites will also decrease the potential for co-channel interference at extended distances. See Appendix D, § 88.429(d).

Grandfathered Maximum Power/Antenna Heights and Bandwidths.

We propose that all systems in the 150-174 and 450-470 MHz band meet the more stringent power/antenna height and bandwidth limitations by January 1, 1996. In addition, prior to that date, any trunked channel, new channel or new site, plus any system with an EUO license more than six months old, must meet the new standards. See Appendix D, § 88.1563.

MISCELLANEOUS PROPOSALS

The following sections include a wide variety of miscellaneous proposals in addition to the major topics discussed above.

Co-Primary 450 MHz Offset Channels.

We propose that the ten 450-470 MHz offset channel pairs currently available only in the Special Industrial Radio Service remain available on a primary basis.[23] To minimize interference, however, we would require that base stations on these channels be removed at least 15 km. (9 miles) from base stations on adjacent channels. See Appendix D, § 88.679.

Emergency Medical Channels.

We propose that the five channel pairs in the 220-222 MHz that PR Docket No. 91-72 proposes to designated for a proposed Emergency Medical Radio Service be restricted to eligibles for that proposed service. This would provide some quick relief to the problems identified in that Docket. See Appendix D, § 88.673.

Extended Implementation.

We propose the extended implementation option for primarily public safety systems above 800 MHz be available in all bands and to any type of licensee provided they can show cause. See Appendix D, § 88.135.

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[23]Most of the 450-470 MHz offset channels currently listed in § 90.267(b) are low power and available only on a secondary basis.

Finder's Preference.

We propose extending the finder's preference provisions to include any exclusive channel assignment. See Appendix D, § 88.229.

Fixed Operations in the 72-76 MHz Band.

We propose replacing our current rules for fixed use of the 72-76 MHz band (§ 90.257(a)) with the rules at § 22.599 for similar operations by common carriers. Those rules are simpler, less burdensome, more flexible, and work for stations operating at higher power levels than permitted PLMR users for the same channels. See Appendix D, § 88.1189.

Fixed Operations in the 150-174 and 450-470 MHz Bands.

We propose that existing fixed use operations be permitted to continue on a secondary basis. We also propose, however, to limit new secondary fixed assignments and significant modifications of existing fixed use systems (other than signaling, ancillary data and alarm operations), to channels with exclusive licensees, and require any applicant for fixed use to receive concurrence from all relevant exclusive licensees. These restrictions are also sufficient for us to propose extending this option to the 150-174 MHz band. Fixed operations would have to conform with the new technical standards at the required dates. See Appendix D, §§ 88.1179 and 88.1203.

Itinerant and Temporary Operations.

We propose to increase the number of itinerant frequencies beyond those created by a proportional increase from the channel split. See Appendix D, § 88.953. We seek comment on the appropriate number of itinerant frequencies. In addition because applications for operations at temporary locations cannot be granted in areas where a licensee has an exclusive assignment and the existence of temporary assignments at unspecified locations makes it difficult to coordinate new exclusive assignments, we seek comment on whether provisions for operation at temporary locations should be eliminated. See Appendix D, § 88.147.

Limits on Shared Channels in the 25-50 MHz, 150-174 MHz and 450-470 MHz Bands.

We proposed no substantive changes in the number of shared channels an individual licensee may hold. See Appendix D, § 88.243. We seek comment, however, on whether this limit (two channels from the propose Subpart D for public safety systems and one channel for non-public safety systems) should be relaxed. In particular, should this limit be relaxed when a licensee converts to narrowband equipment in the 150-174 MHz or 450-470 MHz bands? More generally, is any limit necessary?

Low Power Operations.

We propose designating 96 additional channels in the 460-470 MHz band and 24 channels in the 155-156 MHz band for low power (2 watt) use, in addition to the narrowband channels resulting from splitting the existing low power channels, and low power 450-470 MHz offset channels.

We further propose that the 450-470 MHz offset channels be reduced to 12.5 kHz by January 1, 1996, and to 6.25 kHz by the dates specified at § 88.433. The proposed 464/469 MHz low power channels are 6.25 kHz channels that would result from the first step of the channel split of the channels between 464.300 and 464.975 MHz.[24] Twelve of those 25 kHz channels are currently used for local control use only.[25] These channels could meet the need for additional low power channels as discussed by several commenters.

The channels in the 155 MHz range would serve as a guard band between the transmit and receive frequencies for innovative shared use operations, in addition to meeting the spectrum needs of low power users. See Appendix D, §§ 88.905-88.911.

Low Power Telemetry Operations.

We propose permitting very low power (20 mW or less) telemetry operations on any channel offset by 3.125 kHz from a channel in the 450-470 MHz band listed in subpart D. This would create over 1700 new channels available on a secondary basis. Thus, we propose broad eligibility requirements. In addition, the very low power of such operations eliminates any need for specific licensing information. Thus, such operations would not require a separate authorization. See Appendix D, § 88.1299(b).

Old Subpart O - Transmitter Control.

We propose deleting almost all our rules on transmitter control. These rules are generally outdated and overly regulatory. It is superfluous to state "radio transmitters at remote locations may be operated and controlled through use of wire line or radio links; or through dial-up circuits, ... Such control links or circuits may be either those of the licensee or they may be provided by common carriers...."[26] The most important section of Subpart O concerns interconnection. We do propose eliminating the restriction on geographic areas where interconnect may occur.[27] The prime justification for the existing rule is that it reduces use of shared channels in areas likely to suffer from spectrum congestion. Given our exclusive use overlay proposal and channel split proposals, we believe such restrictions would become unnecessary, because of the reduced number of shared channels and the vastly increased amount of capacity that would be available. On the other hand, we would still require PLMR licensees to comply with restrictions on interconnection contained in Section 332 of the Communications Act of 1934, as amended. See Appendix D, § 88.321(c).

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[24]We also propose creating 4 additional low power itinerant channel pairs from that same frequency range.

[25]See 47 C.F.R. § 90.75(c)(29).

[26]47 C.F.R. § 90.461(b).

[27]See 47 C.F.R. § 90.477(d)(3). The restriction only covers certain non-public safety radio services.

Operations at 2000-3000 and 5167.5 kHz.

We propose no rules corresponding to Sections 90.47, 90.53(b)(1) and 90.253 concerning operations at 2000-3000 kHz and 5167.5 kHz. A review of our licensing records indicated no applications under these rule sections. The rare applicant for these frequencies could file for a rule waiver.

Out-of-band Chirp Limitations.

We propose to add to our frequency stability limitations the requirement that all transmitters type accepted under Part 88 limit "chirps", e.g. transient transmissions at a rapidly changing frequency that may extend a few megahertz from the carrier frequency, to less than 20 milliseconds duration. In the past decade, synthesized transmitters have become common. This type of transmitter, if not properly designed, can cause brief chirps that could cause interference to other users, particularly to television receivers operating in adjacent bands and to other licensees operating digital systems. See § 88.425(c).

Partial Assignments.

We propose expanding the explicit option to make partial assignments to most frequencies under this part. In addition, the definition of partial assignment would allow a licensee to employ narrowband equipment and assign the rest of the original channel-width to another applicant. See Appendix D, § 88.127.

Power Limitations For Paging Operations.

We propose no changes to the power limitations for paging operations. We seek comment, however, on whether to raise permissible power levels on some paging frequency(s), and, if so, to what power and when? See Appendix D, § 88.1067.

Reduced Paperwork Requirements.

We propose to eliminate several rules that impose unnecessary regulatory burdens. For example, licensees are currently required to furnish us with detailed technical information describing the radio system so that we can process license applications or review compliance with our operational rules.[28] The information from these reporting requirements is not, in fact, used by our staff.

Shared Use of Radio Stations and Multiple Licensing.

We propose reducing the options for shared use to private carriers (SMRs) only. We also propose eliminating all forms of multiple licensing.[29] In the past, shared use was needed by industry because certain radio facilities became too expensive for a single small licensee. This need was significantly reduced by the rise of SMRs and other private carriers. Shared facilities and multiple licensed systems (such as community repeaters) are, from the point of view of most actual users, indistinguishable from private carriers. On the other hand, shared use and multiple licensing increase paperwork and cause the licensing database to contain unnecessary and often misleading information. See Appendix D, § 88.321.

Spread Spectrum Operations

We propose to include direct sequence spread spectrum systems for use in public safety covert operations. Because of the availability of direct sequence spread spectrum equipment, we believe that it would be in the public interest to not limit the use of spread spectrum systems by public safety eligibles solely to frequency hopping equipment. We seek comment on this proposal with respect to potential interference to normal operations by direct sequence spread spectrum systems. See § 88.491.

Trunked Operations.

We propose permitting centralized trunking below 800 MHz. Our proposed rules require either exclusivity or written concurrence. One particular difficulty in defining sufficient exclusivity concerns the proposed reduction of power. Thus, the proposed § 88.445(b) contains provisions about the area of exclusivity required to trunk given both current and proposed power limitations. We also propose that trunked operations be designated by a station class ending with a Y. Licensees seeking to trunk several channels they are currently licensed for would be required to modify their station class, and thus undergo frequency coordination. Frequency coordination is important in these cases because the applicant desiring to trunk several channels must identify co-channel licensees and, in certain cases, note their ERP and antenna height. All proposed trunked operations would be required to

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[28] See, for example, 47 C.F.R. § 90.129(c), (d) and (l).

[29] Existing shared and multiple licensed systems could continue operation indefinitely, including adding users to community repeaters.

meet the power requirements set in proposed § 88.429. See Appendix D, §§ 88.445 and 88.1563.

Wideband Paging.

We propose permitting paging systems to continue operating on wideband (25 kHz) channels. Our proposed channelization scheme has been designed to properly separate two-way mobile operations and paging operations. For example, only two narrowband (5 kHz) channels, 158.440 and 158.445 MHz, would be created from the channel currently centered at 158.445 MHz. Those new narrowband channels are sufficiently removed from the paging channel centered at 158.460 MHz, so that wideband paging operations should not interfere with adjacent 5 kHz two-way narrowband mobile operations. New paging systems would be required to meet the out-of-band emissions requirements for narrowband two-way land mobile equipment. We also propose eliminating secondary two-way mobile use of paging frequencies. We do that to limit potential interference. Finally we seek comment on whether to designate specific narrowband paging channels. See Appendix D, § 88.1061.

APPENDIX B

Initial Regulatory Flexibility Analysis

A. Reason for Action

1. The Commission proposes to: 1) create new channels by splitting existing channels between 72 and 512 MHz; 2) create a mechanism giving applicants the ability to obtain channel exclusivity in the 150-174 and 450-470 MHz bands; 3) allocate a block of channels for innovative shared use; 4) provide users technical flexibility to convert to higher technology; 5) consolidate the 19 Private Land Mobile Radio services; 6) reduce power and antenna height to increase frequency reuse; 7) substitute a new Part 88 for Part 90. These actions will reduce congestion, meet future communications capacity needs and generally permit, facilitate and encourage licensees to be spectrum efficient. These proposals will not unduly burden the public or increase administrative costs, and would improve government efficiency. The specific rules also eliminate certain reporting requirements. The new Part 88 will be much more user friendly than Part 90.

B. Objectives

2. We seek to reexamine our general rules and policies for private land mobile radio use in the bands below 800 MHz in order improve spectrum efficiency, and thus meet the varied communications needs of industry and the public safety community, without excessively burdening existing licensees or increasing administrative costs to the Commission. Overall, these proposed rules would increase efficiency by industry and the public safety community.

C. Legal Basis

3. The proposed action is authorized under Sections 4(1), 303(g), 303(r), and 331(a) of the Act, 47 U.S.C. §§ 154(i), 303(g), 303(r), and 332(a) (1988).

D. Reporting, Recordkeeping and Other Compliance Requirements

4. Licensees seeking exclusivity would have to file an application indicating that certain co-channel licensees have granted concurrence to freeze licensing on a certain frequency in a certain geographic area. Type acceptance of narrowband transmitters is needed. The channel split requires bandwidth to be reduced on existing equipment by certain deadlines. There are also proposed incentives to split channels sooner than required. Overall, after a short adjustment period resulting in some increased compliance activity, interference and other complaints should be significantly reduced.

E. Federal Rules Which Overlap, Duplicate or Conflict with These Rules

5. None.

F. Description, Potential Impact, and Number of Small Entities Involved

6. Small entities will be required to make minor adjustments to their existing equipment. The cost of these requirements would vary from nothing to over $100 per transmitter. Most of the adjustments would be made in-house or by small two-way mobile service shops. Eventually some equipment will be replaced sooner than without these rules, although every licensee should have sufficient time to amortize equipment. Future equipment should be designed to be usable for the indefinite future. Although the Commission proposes no rule preventing anyone from continuing to operate indefinitely on their current frequency, many small entities may be reimbursed by other licensees for giving up part or all of their current assignment. These adjustments will reduce interference to all licensees and expand capacity eventually by over 300 percent. That extra capacity will allow existing entities to expand and new entities to meet future mobile communications needs. In total these actions will permit approximately 20 to 30 million additional transmitters to be licensed. We estimate that on average a transmitter and associated hardware and software will be valued at over $1000. Thus, these proposed rules would cost the public approximately five hundred million dollars, but produce twenty to forty billion dollars in additional equipment sales. Overall, approximately 100,000 currently licensed small entities will be affected both positively and negatively, and approximately 300,000 small entities that would be strictly positively affected in the future.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

7. None.

Appendix C

Initial Commenters

Advanced MobileComm, Inc. (AMI)
American Association of State Highway and Transportation Officials
American Automobile Association, Inc.
American Radio Relay League, Incorporated
American Telephone and Telegraph Company (AT&T)
American Trucking Association, Inc. (ATA)
Associated Oregon Loggers Services, Inc
Associated Public-Safety Communications Officers, Inc. (APCO)
Association for Private Carrier Paging Section of the National Association of Business and Education
Association of American Railroads (AAR)
Association of Federal Communications Consulting Engineers
C-Comm of Kalamazoo, Inc.
California Emergency Medical Services Authority
California Public-Safety Radio Association, Inc.
Central Station Alarm Association
Chips International, Inc.
County of Orange, California
County of Santa Barbara
E. F. Johnson Company
ETrunk Systems, Inc
Ericsson Corporation, The
Forest Industry Telecommunications (FIT)
Forestry Conservation Communications Association (FCCA)
Georgia-Pacific Corporation
Hansen Logging
Hewlett-Packard Company Medical Products Group (HP)
Institute of Electrical and Electronics Engineers, U.S. Activities Board, Committee on Communications and Information Policy
Intelligent Vehicle Highway Society of AMERICA
International Association of Fire Chiefs, Inc. and The International Municipal Signal Association
International Mobile Machines Corp.
International Taxicab and Livery Association
Joint Comments of the Special Industrial Radio Service Association, Inc., National Association of Business and Educational Radio, Inc., American Petroleum Institute, American Mobile Telecommunications Association, Inc., Telephone Maintenance Frequency Advisory Committee, and Council of Independent Communication Suppliers (Joint Commenters)
Ketchikan Air Service, Inc
Land Mobile Communications Council (LMCC)
Manufacturers Radio Frequency Advisory Committee, Inc.
Metropolitan Water District of Southern California
Mobile Communications Service
Motorola, Inc.
National Association of State Emergency Medical Services Directors
National Association of State Foresters
National Telecommunications and Information Administration (NTIA)

National Telephone Cooperative Association
Nippon Telegraph and Telephone
Orion Telecom
Region-20 Public Safety Plan Review Committee
Roseburg Forest Products
SCS MOBILECOM, INC
SEA Inc.
Spacelabs
Spectrum Resources, Inc.
State of California
State of Nevada, Department of Wildlife
State of Washington, Washington State Patrol
Stern, Harold, Assistant Professor of EE University of Alabama-College of Engineering
T and W Electronics, Inc.
Tacoma Public Utilities
Telecommunications Industrial Association (TIA)
Union Pacific Railroad Company and Missouri Pacific Railroad Company
Utilities Telecommunications Council (UTC)
West Repeater Service
Weyerhaeuser Information Systems

Reply Commenters

Advanced MobileComm, Inc.
American Association of State Highway and Tranportation Officials
Arizona Department of Transportation
Arkansas Highway and Transportation Department
Associated Public-Safety Communications Officers, Inc.
Association for Maximum Service Television
Association of American Railroads
California Department of Transportation
Cycomm Corporation
Delaware Department of Transportation
District of Columbia Department of Public Work
Forest Industry Telecommunications
Forestry Conservation Communications Association
Hawaii Department of Transportation
Health Industry Manufacturers Association
Hewlett-Packard Company Medical Products Group
Idaho Transportation Department
Illinois Department of Transportation
Indiana Department of Transportation
International Association of Fish and Wildlife Agencies
Iowa Department of Transportation

Joint Comments of the Special Industrial Radio Service Association, Inc., National Association of Business and Educational Radio, Inc., American Petroleum Institute, American Mobile Telecommunications Association, Inc., Telephone Maintenance Frequency Advisory Committee, and Council of Independent Communication Suppliers

Joint Reply Comments of Manufacturers Radio Frequency Advisory Committee, Inc., Forest Industry Telecommunications and American Trucking Associations, Inc.

Kentucky Transportation Cabinet

Land Mobile Communications Council

Louisiana Department of Transportation and Development

Manufacturers Radio Frequency Advisory Committee, Inc

Michigan Department of Transportation

Minnesota Department of Transportation

Mississippi State Highway Department

Missouri Highway and Transportation Department Stephen Knobbe

Missouri Highway and Transportation Department Wayne Muri

Montana Department of Transportation

Motorola Inc.

New Hampshire Department of Transportation

New Mexico State Highway and Transportation Department

New York State Department of Transportation

North Carolina Department of Transportation

Oklahoma Department of Transportation

Oregon Department of Transportation

Pacific Bell

Pennsylvania Department of Transportation

REACT International, Inc.

Region Planning Update Committee of Tri-State Radio Planning Committee (FCC Region 8)

SEA Inc.

South Carolina Department of Highways and Public Public Transportation

Southwestern Bell Telephone Company

State of Louisiana Department of Transportation and Development

State of Nevada, Department of Wildlife

Telecommunications Industrial Association

Texas Department of Transportation

Texas Turnpike Authority

U S WEST Communications, Inc.

Uniden America Corporation

United States Telephone Association

Utah Department of Transportation

Utilities Telecommunications Council

Virginia Department of Transportation

Washington State Department of Transportation

Wyoming Department of Transportation

We also received 8 letters after the reply comment deadline that have been included in the record of this proceeding.

Appendix D

Proposed Rules

47 C.F.R. Parts 1, 2, and 94 are amended, Part 90 is removed, and a new Part 88 is added as follows:

Part 1 - Practice and procedure

1. The authority citation for Part 1 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. § 1.914 is amended by designating the existing paragraph as paragraph (a) and adding new paragraphs (b) and (c) to read as follows:

§ 1.914 Full disclosures.

* * * * *

(b) Each application shall be clear and complete in itself without cross reference to information previously filed. An application for modification of an existing station must show in precise detail all particulars of the desired operation, including those not affected by the modification.

(c) Each application for digital voice emission will be made only with the understanding that the applicant must disclose current encoding information to an FCC official upon request at any time after station authorization. All authorizations for digital voice systems are issued subject to this requirement.

3. § 1.918 is amended by revising paragraph (b) and adding a new paragraph (f) to read as follows:

§ 1.918 Amendment of applications.

* * * * *

(b) Any application, except for mutually exclusive applications, may be amended as a matter of right at any time prior to the time the application is granted or designated for hearing. However, an application that is substantially amended, as defined by § 1.962(c), will be considered a newly filed application as of the date of the filing of the amendment.

* * * * *

(f) No application for a radio station in the 220-222 MHz band or above 800 MHz may be amended so as to substitute a new entity as the applicant except in the following circumstances:

(1) The amendment is allowed as a matter of right under paragraph (b) of this section; or

(2) The amendment does not involve a substantial change in the ownership or control of the applicant; or

(3) The changes in the ownership or control of the applicant are involuntary due to the original applicant's insolvency, bankruptcy, incapacity, or death.

4. § 1.922 is amended by revising the titles of Forms 402, 572, 572C, and 574-B, removing Forms 525, 574-A and 577, and adding Form xxx to read as follows:

§ 1.922 Forms to be used.

FCC Form	Title
402	Application for Station Authorization in the Private Operational Fixed Microwave Radio Service.
	* * * * *
572	Temporary Permit to Operate a Part 88 Radio Station.
572C	Conditional Temporary Authorization to Operate a Part 88 Radio Station.
	* * * * *
574-B	Private Radio Services Supplementary Information Form.
	* * * * *
xxx	Private Radio Application for Exclusive Use Overlay (EUO) and Temporary Licensing Freeze.

5. § 1.924 is amended by adding a sentence at the end of paragraph (a)(1) to read as follows:

§ 1.924 Assignment or transfer of control, voluntary or involuntary.

(a)(1) * * * A station authorization and the rights it grants shall not be transferred, assigned, or in any manner disposed of to any person, unless the Commission shall, after obtaining full information, decide that the transfer, assignment, or disposal is in the public interest, convenience or necessity and give its consent in writing.

* * * * *

6. § 1.925 is amended by removing paragraphs (h) and (i),

redesignating paragraph (j) as (h), and revising the section heading paragraph (g) to read as follows:

§ 1.925 Application for special temporary authority authorization, temporary permit or temporary operating authority.

* * * * *

(g) An applicant for a private land mobile station license utilizing an already authorized facility may operate the radio station(s) for a period of up to 180 days under a temporary permit evidenced by a properly executed temporary license certificate (Form 572) after submitting or filing a formal application for station license in accordance with § 88.75, provided that all the antennas employed by control stations are twenty feet or less above ground or twenty feet or less above a man-made structure other than an antenna tower to which it is affixed. When required by § 88.305, applications must be accompanied by evidence of frequency coordination. The temporary operation of stations, other than mobile stations, within the Canadian coordination zone is limited to stations with a maximum of 5 watts effective radiated power (except for exclusive assignments) and a maximum antenna height of 6.1 meters (20 ft) above average terrain.

* * * * *

7. § 1.931 is revised to read as follows:

§ 1.931 Requests for waiver of private radio rules

(a) Requests for waiver of the rules in this subpart must state the nature of the waiver or exception desired, and set forth reasons in support thereof, including a showing that unique circumstances are involved and that there is no reasonable alternative solution within existing rules. When a waiver request is submitted with a specific application under Part 88 of these rules, the submission and filing procedures of § 88.75 of this chapter will also apply. Requests for waivers will be evaluated based on whether good cause for the request is shown and whether grant of the waiver would promote the public interest.

(b) Applications may be dismissed if the accompanying petition for waiver of the rules does not set forth reasons that, if true, would justify a waiver or exception.

(c) Applicants requiring expeditious processing of their request for waiver shall clearly caption both their request for waiver and the envelope containing it with the words "WAIVER--TIMELY ACTION REQUESTED."

(d) All requests for waiver of the rules governing the Private Radio Services that require a fee (see § 1.1102) shall be submitted to the Mellon Bank, Pittsburgh, Pennsylvania, at the address set forth in § 1.1102. Waiver requests that do not require a fee shall be addressed to: Federal Communications Commission, Gettysburg, Pennsylvania 17326. Waiver requests attached to applications must be filed in accordance with § 0.401(b) of this chapter.

8. § 1.933(a) is revised to read as follows:

§ 1.933 Installation or removal of apparatus.

(a) In the Private Land Mobile Radio Services, replacement of transmitting equipment may be made without prior authorization provided that the replacement transmitter is included in the Commission's current Radio Equipment List as type-accepted for use under Part 88, and the substitute equipment employs the same type of emission and the power does not exceed the station authorization.

* * * * *

9. §§ 1.951(b) is revised to read as follows:

§ 1.951 How applications are distributed.

* * * * *

(b) Land Mobile Branch. Public Safety, Non-Commercial, Specialized Mobile Radio, and General Category.

10. § 1.952(a) is revised to read as follows:

§ 1.952 How file numbers are assigned.

(a) File numbers are assigned to certain categories of applications by the Private Radio Bureau. The assignment of a file number to an application is for administrative convenience and does not indicate the acceptance of the application for filing and processing.

* * * * *

11. § 1.958(a) is amended by revising the introductory paragraph to read as follows:

§ 1.958 Defective applications.

(a) Applications that are incomplete with respect to answers, supplementary statements, execution, or other matters of a formal character shall be deemed defective and may be dismissed. In addition, if an applicant is requested to file any additional documents or information not included in the prescribed application form, failure to comply with such request will render the application defective and it may be dismissed. Applications will also be deemed to be defective and will be dismissed in the following cases:

* * * * *

Part 2 - Frequency allocations and radio treaty matters; general rules and regulations

12. The authority citation for Part 2 continues to read:

Authority: Sec.4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

13. In 47 C.F.R. § 2.106, the Table of Frequency Allocations is amended by changing all references in Column 6 of the Table from Private Land Mobile (90) to Private Land Mobile (88), (70 places), removing all references in Column 6 to Footnotes NG49, NG51, and NG70, removing these Footnotes, and revising Footnotes US11, US44, US48, US49, US50, US51, US58, US110, US220, US266, US281, US298, US312, NG6, NG17, NG28, NG42, NG66, NG111, NG112, NG114, NG124, NG134, and NG141 to read as follows:

* * * * *

UNITED STATES (US) FOOTNOTES

* * * * *

US11 is amended by replacing the words "public safety radio services" in the first and second sentences with "Public Safety Radio Service".

US44, US48, US49, US50, US51, US58 (2 places), and US110 are amended by replacing the words "The non-Government radiolocation service" with "Non-Government radiolocation operations".

US220 is amended by removing the words "in the petroleum radio service,".

US266 is amended by replacing the words "public safety radio services" with "Public Safety Radio Service".

US281 is amended by deleting the words "in the industrial radio services".

US298 is deleted.

US312 is amended by replacing "Police Radio Service" with "Public Safety Radio Service".

NON-GOVERNMENT (NG) FOOTNOTES

NG6 is amended by deleting in the first sentence "in the public safety radio services", and replacing in the last sentence "public radio service system" with "public safety radio service stations".

NG17 is amended by deleting in the first sentence "in the land transportation radio services", and replacing in the last sentence "land transportation radio service system" with "stations".

NG28 is amended by replacing "the land transportation radio service." with "stations in the Non-Commercial Radio Service.".

NG42 is amended by replacing "stations in the radiolocation service" with "radiolocation operations".

NG49 is deleted.

NG51 is deleted.

NG66 is amended by replacing the second sentence with "In the land mobile services it is available in the Public Mobile Services and Private Land Mobile Radio Services at, or in the vicinity of 13 urbanized areas of the United States, as set forth in the table below", replacing in the third sentence "public safety radio services" with "Public Safety Radio Service", and in the last sentence, replacing "90" with "88".

NG70 is deleted.

NG111 is amended by replacing "paging operations in the special emergency radio service." with "medical paging operations".

NG112 is revised to read "The frequencies 25.04, 25.08, 150.980, 150.985, 154.590, 158.440, 158.445, 159.480, 159.485, 453.990625/458.990625, 453.996875/458.996875, 454.003125/459.003125, and 454.009375/459.009375 MHz may be authorized to stations in the private land mobile radio services for use primarily in oil spill containment and cleanup operations and secondarily in regular land mobile communications.

NG114 is amended by replacing "Parts 22 and 90" with "Parts 22 and 88".

NG124 is revised to read "In the Public Safety Radio Service, allocations within the band 30-50 MHz, 150-174 MHz, and 450-470 MHz, police licensees are authorized to operate low-power radio transmitters on a secondary, non-interference basis in accordance with the provisions of Sections 2.803 and 88.1155 of the Rules."

NG134 is amended by replacing "stations in the radiolocation service" with "radiolocation operations".

NG141 is amended by replacing in the second sentence "90" with "88".

14. Part 90 is removed in its entirety and Part 88 is added to read as follows:

15. The authority citation for Part 88 reads:

Authority: Sections 4, 303, 332, 48 Stat., as amended, 1066, 1082; 47 U.S.C. §§ 154, 303, and 332 unless otherwise noted.

PART 88 - PRIVATE LAND MOBILE RADIO SERVICES

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AUTHORITY: Sections 4, 303, 331, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

SUBPART A - General Information

§ 88.1 Basis and purpose.

(a) **Basis**. The rules in this part are promulgated under Title III of the Communications Act of 1934, as amended, which gives the Federal Communications Commission authority to regulate radio transmission and to license radio stations. All rules in this part are in accordance with applicable treaties and agreements to which the United States is a party.

(b) **Purpose**. The purpose of these rules is to establish the requirements and conditions under which private land mobile radio stations may be licensed and used in the Public Safety, Non-Commercial and Specialized Mobile Radio Services.

§ 88.5 Related rule parts.

Other Commission rule parts that may be referenced in regard to the licensing and operation of the radio services governed under this part include the following:

(a) **Part 0** of this chapter describes the Commission's organization and delegations of authority. This part also lists available Commission publications, and standards and procedures for access to Commission records, the location of Commission offices, and the addresses for mailing applications and filings to the Commission.

References to Part 0 of this chapter.

(1) Section 88.75 (§ 0.401(b) of this chapter) - concerning fee information.

(2) Section 88.317 (§ 0.121(c) of this chapter) - concerning protection of FCC facilities.

(3) Section 88.1113 (§ 0.121(c) of this chapter) - concerning protection of FCC facilities.

(b) **Part 1** of this chapter includes rules of practice and procedure for adjudicatory proceedings, rule making proceedings, procedures for reconsideration and review of the Commission's actions, provisions concerning violation notices and forfeiture proceedings, rules concerning the application for radio licenses (including forms to be used, filing requirements, etc), and the schedule of fee charges.

References to Part 1 of this chapter.

(1) Section 88.75 (§§ 1.1207 and 1.1311 of this chapter) - concerning environmental assessments.

(2) Section 88.75 (§ 1.918 of this chapter) - concerning amendment or dismissal of applications.

(3) Section 88.87 (§ 1.912(b) of this chapter) - concerning fees.

(4) Section 88.103 (§ 1.972 of this chapter) - concerning random selection procedures.

(5) Section 88.305 (§ 1.955 of this chapter) - concerning coordination with Canada.

(c) **Part 2** of this chapter contains the U.S and International Table of Frequency Allocations, information concerning the marketing and importation of radio frequency devices, and procedures for obtaining equipment authorization.

References to Part 2 of this chapter.

(1) Sections 88.405, 88.1113 and 88.1125 (§ 2.803 of this chapter) - concerning equipment approval

(2) Section 88.413 (§ 2.202 of this chapter) - concerning bandwidth calculations.

(3) Sections 88.1283 (§ 2.106 of this chapter) - referencing the frequency allocations table.

(d) **Part 5** of this chapter contains standards and procedures for obtaining experimental authorizations.

(e) **Part 15** of this chapter contains rules for the operation of radio frequency devices that do not require an FCC license.

References to Part 15 of this chapter.

(1) Section 88.1113 - concerning operation of field disturbance sensors.

(2) Section 88.1213 (§ 15.113 of this chapter) - concerning use of power line carrier systems.

(f) **Part 17** of this chapter contains detailed requirements for the construction, marking, and lighting of antenna towers.

(g) **Part 18** of this chapter deals with the operation of industrial, scientific, and medical (ISM) devices.

References to Part 18 of this chapter.

Sections 88.1109 and 88.1125 - concerning ISM devices.

(h) **Part 22** of this chapter contains regulations for the public (common carrier) mobile radio services, including cellular radio and the Basic Exchange Telephone Radio Service.

Reference to Part 22 of this chapter.

Section 88.313 - concerning Basic Exchange Telephone Radio Service.

(i) **Part 68** of this chapter provides the technical standards for the connection of private land mobile radio equipment to the public switched telephone network.

(j) **Part 80** of this chapter contains the operating procedures for the maritime services.

Reference to Part 80 of this chapter.

Section 88.1109 - concerning maritime radionavigation.

(k) **Part 87** of this chapter contains the operating procedures for the aviation services.

Reference to Part 87 of this chapter.
Section 88.1109 - concerning aeronautical radionavigation.

(l) **Part 94** of this chapter governs the licensing and operation of private operational- fixed radio stations on frequencies in the microwave spectrum above 928 MHz.

§ 88.7 Glossary of terms.

Amplitude compandered single sideband (ACSB). A type of single sideband modulation that uses narrow channels and incorporates the use of a pilot tone.

Analog. The physical representation of information such that the output varies as a continuous function of the input.

Antenna height above average terrain (AAT). Height of the center of the radiating element of the antenna above the average terrain. See § 88.429(j)(2) for calculation method.

Antenna height above sea level. The height of the topmost point of the antenna above mean sea level.

Antenna structure. The structure on which an antenna is mounted.

Assigned frequency band. The frequency band the center of which coincides with the frequency assigned to the station and the width of which equals the necessary bandwidth plus twice the absolute value of the frequency stability.

Assigned frequency. The center of a frequency band assigned to a station.

Assignment.

1. The transfer, by any means, of an authorization from the present holder to another person as defined in section 3(i) of the Communications Act.

2. An action that conveys a license or construction permit from one person to another.

Automatic vehicle monitoring (AVM) systems. Systems using non-voice signalling methods to locate vehicles and transmit status or instructional messages concerning vehicles.

Average terrain. The average elevation of terrain between 3 and 16 km (2 and 10 miles) from the antenna site.

Base station.

1. A station at a specified site authorized to communicate with mobile stations.

2. A station in the land mobile radio service.

Bio-medical telemetry. A low power communications device, consisting of one or more transmitters, used to transmit, within a restricted area, measurements of either human or animal biomedical phenomena.

Bit rate. The rate at which digital information is transmitted over a communication path, normally expressed in bits per second (bps).

Carrier frequency. The frequency of the unmodulated fundamental output from a radio transmitter.

Channel loading. The number of mobile transmitters authorized to operate with a particular base station on a particular channel within a particular service area.

Class of emission. The set of characteristics of an emission, designated by standard symbols and describing, for example, type of modulation, modulating signal, and type of information to be transmitted.

Continuous tone controlled squelch system (CTCSS). A squelch system that permits audio signals to appear at the receiver output only when a carrier modulated with a specific tone is received.

Control point. An operating position from which a transmitter's functions may be controlled.

Control station. A station at a specified site that automatically controls the emissions or operations of a base station or mobile relay.

Conventional radio system. A land mobile radio system that operates on one or more channels but does not employ trunking technology.

Data communication. The movement of encoded information by means of electromagnetic transmission systems.

Developmental operation. A licensed operation used for developing and testing new equipment and techniques in the radio services governed by this part.

Digipeater. A simplex station that automatically retransmits digital information, delayed in time.

Digital. The representation of information such that the output varies as a discrete, discontinuous function of the input.

Digital communications. The transfer of intelligence through the use of

encoded numerical values and the transmission of such intelligence using discontinuous signals that change in frequency, amplitude, or phase.

Digital voice emission. An emission resulting from the use of digital voice modulation.

Digital voice modulation. The process by which some characteristic (frequency, phase, amplitude, or some combination thereof) of a carrier frequency is varied in accordance with a digital signal (e.g., pulses or states) that is a coded representation of the human voice.

Dispatch communication. Two-way voice communication, normally not more than one minute in duration, between base and mobile stations.

Dispatch point. Any position from which radio messages can be originated under the supervision of a control point.

Duplex operation. A method of radio communication that allows two stations to transmit and receive at the same time.

Effective radiated power (ERP). The product of the power supplied to an antenna and the gain of the antenna relative to a half-wave dipole in a given direction.

Emission designators. The symbols used to describe the basic characteristics of a radio wave, including bandwidth, modulation type, modulating signal(s), and type of information transmitted. See § 88.409(b) for discussion of emission designators applicable to the private land mobile radio services. See Part 2, Subpart C for explanation of emission designators applicable to the private land mobile radio services.

Emission. The electromagnetic radiation produced by a radio transmitter.

Encryption. The expression of a single character or a message in terms of a code to obtain communications privacy.

Equivalent isotropically radiated power (EIRP). The product of the power supplied to an antenna and the antenna gain in a given direction relative to an isotropic antenna.

External controls. Hardware on the outside of a transmitter that may be used to program the transmitter's operating frequencies.

Fixed operation. Radiocommunication service between specified fixed points.

Fixed relay station. A fixed station authorized to automatically retransmit toward other fixed stations communications received from fixed or mobile stations.

Fixed station. A station at a fixed location that communicates with other fixed, base, or mobile stations in the land mobile radio service.

Frequency coordinator. An entity or organization certified by the Commission to recommend frequencies for use by licensees in the Private Land Mobile Radio Services.

Frequency division multiplexing (FDM). The transmission of a number of signals over a common path by using a different frequency band for each signal.

Frequency hopping spread spectrum. A system where the frequency of the carrier is not fixed but changes at fixed intervals under the direction of a pseudorandom coded sequence. The wide RF bandwidth needed by such a system is not required by a spreading of the RF energy about the carrier but rather to accommodate the range of frequencies to which the carrier can hop. See § 2.1.

Frequency sharing. The sharing of the same portion of spectrum by two or more users where a possibility for interference exists.

Frequency shift keying (FSK). A form of frequency modulation in which the modulating waves (or digital pulses) shift the output frequency between different predetermined values.

Frequency stability. The extent to which the carrier frequency of a transmitter may be permitted to depart from the frequency assigned. For the purposes of this part, frequency tolerance is expressed in parts per million.

Front-to-back ratio. The ratio of power gain between the front and rear of a directional antenna.

Geographic center. The geographic center of an urbanized area is defined by the coordinates given at § 88.1601.

Half-wave dipole. A straight ungrounded antenna, usually fed in the center, having an electrical length equal to one-half the wavelength of the operating signal. When mounted vertically, it has a donut shaped pattern in the vertical plane and a circular pattern in the horizontal plane. Antenna gain is often measured in terms of gain "above a half-wave dipole."

Harmful interference. For the purpose of resolving conflicts between stations operating under this part or other parts of the Commission's Rules, any emission, radiation, or induction that seriously degrades, obstructs, or repeatedly interrupts the service provided by such stations. See § 2.1 of this chapter.

Interconnection. Connection through automatic or manual means of private land mobile radio stations with facilities of the public switched telephone network to permit the transmission of messages or signals between points in the wireline or radio network of a public telephone company and persons served by private land mobile radio stations. Wireline or radio circuits or links furnished by common carriers, which are used by licensees or other authorized persons for transmitter control (including dial-up transmitter control circuits) or as an integral part of an authorized, private internal system of communication or as an integral part of dispatch point circuits in a private

land mobile radio station are **not** considered to be interconnection for purposes of this rule part.

Interference. The effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radiocommunication system, manifested by any performance degradation, misinterpretation, or loss of information which could be extracted in the absence of such unwanted energy.

Internal system. An internal system of communication is one in which messages are transmitted between the fixed operating positions located on the premises of a licensee and the associated mobile stations or paging receivers of the licensee.

Interservice sharing. Frequency sharing among users operating in different radio services.

Itinerant operation. Operation of a radio station at unspecified locations.

Land mobile radio service. A radio service between base stations and mobile stations, or between mobile stations.

Land mobile radio system. A regularly interacting group of base, mobile and any associated control and relay stations intended to provide land mobile radio communications service over a single area of operation.

Line A. An imaginary line within the U.S., approximately paralleling the U.S.-Canadian border, north of which Commission coordination with Canadian authorities in the assignment of frequencies is generally required. It begins at Aberdeen, Washington, running by great circle arc to the intersection of 48° N., 120° W., then along parallel 48° N., to the intersection of 95° W., then by great circle arc through the southern most point of Duluth, Minn., then by great circle arc to 45° N., 85° W., then southward along meridian 85°W., to its intersection with parallel 41° N., then along parallel 41° N. to its intersection with meridian 82° W., then by great circle arc through the southernmost point of Bangor, Maine, then by great circle arc through the southernmost point of Searsport, Maine, where it ends.

Line C. An imaginary line in Alaska approximately paralleling the border with Canada, East of which Commission coordination with Canadian authorities in the assignment of frequencies is generally required. It begins at the intersection of 70° N., 144° W., then by great circle arc to the intersection of 60° N., 143° W., then by great circle arc so as to include all the Alaskan Panhandle.

Meteor burst communications. Communications through the propagation of radio signals reflected by ionized meteor trails.

Mobile (vehicular) repeater station. A mobile station authorized to automatically retransmit on a mobile station frequency, communications to or from hand-carried transmitters.

Mobile relay station. A base station authorized to automatically retransmit radio communications that originate on the transmitting frequency of a mobile

station or a control station and that are retransmitted on the receiving frequency of the mobile or control station. A mobile relay station is designed to extend the range of mobile stations in a land mobile radio system.

Mobile station. A station in the land mobile radio service intended to be used while in motion or during halts at unspecified points. This includes hand carried transmitters.

Mutually exclusive applications. Two or more applications for a license, only one of which can be granted.

Necessary bandwidth. For a given class of emission, the width of the frequency band that is just sufficient to ensure the transmission of information at the rate and with the quality required under specified conditions. See 2.202 of this chapter for calculations of necessary bandwidth.

Occupied bandwidth. The width of a frequency band such that, below its lower and above its upper frequency limits, the mean powers radiated are equal to 0.5% of the total mean power radiated by a given emission. In some cases, such as multichannel frequency-division systems, the percentage of 0.5% may lead to certain difficulties in the practical application of the definitions of occupied and necessary bandwidth; in such cases a different percentage may prove useful.

Offset frequencies. Frequencies that are separated from regularly assigned frequencies by a given amount and may be assignable in certain land mobile radio services under certain conditions.

Out-of-band emission. Emission on a frequency or frequencies immediately outside the necessary bandwidth that results from the modulation process (excluding spurious emissions).

Output power. The radio frequency output power of a transmitter's final radio frequency stage as measured at the output terminal while connected to a load impedance of the value recommended by the manufacturer.

Paging. A one-way communications service from a base station to mobile or fixed receivers that provide signaling or information by such means as tone, tone-voice, tactile, optical readout, etc.

Peak envelope power. The average power supplied to the antenna during one radio frequency cycle at the highest crest of the modulation envelope, taken under conditions of normal operation.

Phase shift keying (PSK). A form of phase modulation in which the modulating function shifts the instantaneous phase of the modulated wave between predetermined discrete values.

Point-to-point. Describing communication between two fixed stations.

Portable station. A station designed to be hand carried and capable of transmitting and/or receiving while in motion or during brief halts at unspecified locations.

Primary operation. Radio communications that are protected from harmful interference from facilities operating on a secondary basis.

Private carrier. An entity licensed in the private services and authorized to provide communications service to other entities on a commercial basis.

Protection ratio. The minimum value of the desired-to-undesired signal ratio, usually expressed in decibels, at the receiver input determined under specific conditions such that specified reception quality of the wanted signal is achieved at the receiver output.

Public switched telephone network (PSTN). The network that provides circuits for public telephone service.

Radio call box. A transmitter used by the public to request fire, police, medical, road service, or other emergency assistance.

Radio service. An administrative subdivision descriptive of particular groups of licensees, as, for example, the Public Safety Radio Service.

Radiodetermination. The determination of position, velocity and/or other characteristics of an object, or the obtaining of information relating to these parameters, by means of the propagation properties of radio waves.

Radiolocation. Radiodetermination used for purposes other than those of radionavigation.

Repeater station. See Mobile relay station.

Secondary operation. Radio communications that may not cause harmful interference to operations authorized on a primary basis and that are not protected from harmful interference from primary operations.

Signal booster. A device that automatically amplifies and transmits received transmissions with no change in frequency or authorized bandwidth.

Simplex operation. Radio communication between two stations that takes place in only one direction at a time. This includes press-to-talk operation (PTT), voice operated transmit, and other forms of manual or automatic switching from transmit to receive.

Single sideband. An amplitude modulated emission where only one sideband is transmitted.

Specialized Mobile Radio (SMR) Service. A radio service in which licensees provide land mobile communications services on a commercial basis.

Spread spectrum. A communications technique in which many signal waveforms are transmitted over a band much wider than needed to transmit each signal alone, spreading the signal power thinly over the wide band. See § 2.1 of this chapter.

Spurious emission. Emission on a frequency or frequencies that are outside the necessary bandwidth and the level of which may be reduced without affecting the corresponding transmission of information. Spurious emissions include harmonic emissions, parasitic emissions, intermodulation products and frequency conversion products, but exclude out-of-band emissions.

Squelch. A circuit that acts to quiet a receiver (silencing receiver noise) in the absence of signals of a certain level.

Station authorization. Any license or special temporary authorization issued by the Commission for the operation of a radio station.

Station. A combination of one or more transmitters, receivers, antennas and various accessory equipment used to provide radio communication.

Suburban-conventional radio system. A conventional radio system in which the transmitter site is located more than 24 km (15 mi) from the geographic center of any of the first 50 urbanized areas (ranked by population) of the United States. See §§ 88.429(k)(1) and 88.1601.

Suppressed carrier emissions. A type of transmission in which the carrier frequency is either partially or totally suppressed and one or both sidebands are transmitted.

Telemetering/telemetry. The transmission of non-voice signals for the purpose of automatically indicating or recording measurements at a distance from the measuring instrument.

Telephony. A system of telecommunication for the transmission of speech or other sounds. See Emission Designators, § 88.409(b).

Tone signalling. The use of voice-frequency tones or impulse signals to transmit supervisory, address or alerting messages.

Travelers' information station. A base station authorized to local government entities that is used to transmit non-commercial, voice information pertaining to traffic and road conditions, traffic hazards and travelers' advisories, including directions, availability of lodging, rest stops, and service stations, and descriptions of local points of interest.

Trunked radio system (in mobile communications). A radio system utilizing trunking as a means for selecting radio frequency channels.

Trunking (in mobile communications). The automatic selection of an unoccupied radio channel from among several channels available to a particular licensee.

Type acceptance. An equipment authorization issued by the Commission based on representations and test data submitted by the applicant.

Urban-conventional radio system. A conventional radio system in which the transmitter site is located within 15 miles (24 km) of the geographic center of any of the first 50 urbanized areas (ranked by population) of the United States. See §§ 88.429(k)(1) and 88.1601.

Waiting list. A list of applicants applying for radio licenses in a particular area. Each applicant is ranked in order of receipt of application, and licenses are granted as channels become available.

Wireline common carrier. A common carrier that is certificated to provide landline local exchange telephone service.

§ 88.11 Private Land Mobile Radio Services.

The Private Land Mobile Radio Services allow state and local governments, commercial and non-profit organizations to use the electromagnetic spectrum for mobile and ancillary fixed telecommunications to assure safety of life and property, and to improve productivity and efficiency.

§ 88.13 Public Safety Radio Service.

(a) **Eligibility**. Any territory, possession, state, city, county, town or similar governmental entity, including a district and an authority, but not including a school district or authority or a park district or authority, and persons charged with specific public safety activities, including police and fire protection, forestry-conservation, emergency life support or emergency rescue operations, is eligible to hold authorizations in the Public Safety Radio Service to operate radio stations for transmission of communications essential to official activities of the licensee. Applications from persons or organizations other than governmental entities must be accompanied by a statement from the governmental entity having legal jurisdiction over the area to be served, supporting the request.

(b) For **Travelers' Information Station** applications only, eligibility requirements for the Public Safety Radio Service also includes park districts and authorities. See §§ 88.1089-88.1097.

§ 88.15 Non-Commercial Radio Service.

(a) **Eligibility**. Any business, charitable or non-profit organization, or government agency is eligible to hold a license in the Non-Commercial Radio Service to operate a system that will be used primarily for the licensee's internal use, by the licensee's parent corporation, by a subsidiary of the same parent, or by a subsidiary of the licensee except:

(1) Foreign governments and agents of foreign governments are ineligible for any license under this Part.

(2) Federal government agencies are not eligible for licenses under this Part, unless otherwise indicated, although certain frequencies are available for both Government and non-Government use.

(b) **Management Contracts.** A licensee in the Non-Commercial Radio Service using the system strictly for internal use may employ a system manager to operate the system provided that the contract leaves the licensee with de jure and de facto control of the actual system

(c) **Excess Capacity.** Except in the 220-222 MHz band, a licensee in the Non-Commercial Radio Service operating a system for its own internal use may lease excess capacity, provided that at least 50 percent of the mobiles in that system are for licensee's own use, including those permitted by § 88.465. Only mobiles used by the licensee count towards loading. See § 88.273.

§ 88.17 Specialized Mobile Radio Service.

(a) **Eligibility.** Any entity proposing to provide station and ancillary facilities on a commercial basis may apply for a license as a Specialized Mobile Radio System (SMRS), except:

(1) Foreign governments and agents of foreign governments are ineligible for any license or to receive service from another licensee under this service.

(2) In the 220-222 MHz, 806-821/851-866 and 896-901/935-940 MHz bands, wire line telephone common carriers are restricted to a non-controlling interest in any SMRS.

(b) **Management Contracts.** A licensee in the Specialized Mobile Radio Service may employ a system manager to operate the system provided that the contract leaves the licensee with de jure and de facto control of the actual system.

§ 88.21 General Category Pool.

General category pool frequencies are available to applicants eligible for any of the Private Land Mobile Radio Services including the Public Safety Radio Service, the Non-Commercial Radio Service or the Specialized Mobile Radio Service.

Subpart B - General Procedures And Policies

§ 88.51 Scope.

The rules in this subpart govern the submission and filing of applications to operate radio facilities under this part. It also contains information concerning the Commission's policies for assigning frequencies governed by this part, frequency coordination procedures, and procedures under which licensees may obtain channel exclusivity.

APPLICATIONS AND AUTHORIZATIONS

§ 88.55 Station authorizations.

No radio transmitter may be operated in the services governed by this part except under and in accordance with a proper authorization granted by the Commission. Persons desiring a radio station or radio system authorization must first submit the appropriate application(s). The following sections contain procedures and requirements for submitting or filing applications for authority to operate radio facilities under this part. Subpart F of Part 1 of this chapter contains additional general information on this subject. The rest of this Part contains numerous exceptions and additional requirements regarding more specific classes of operations.

§ 88.59 Ineligibility of foreign governments.

No station authorization in the radio services governed by this part will be granted to or held by a foreign government or its representative.

§ 88.63 Applications for station or system authorizations.

Prescribed application forms are listed in §§ 1.922, 1.924, 1.926 and 88.67 of this chapter. The forms may be obtained from the Washington, D.C. office of the Commission, its Gettysburg, Pa. office, or from any of its engineering field offices. (See § 88.111 for information regarding special temporary authorizations.) Part 1, subpart F lists where applications are to be filed, full disclosure, who may sign applications, amendment of applications, defective applications, resubmitted applications, dismissal of applications, and Commission processing of applications.

§ 88.67 Application forms.

The following application forms must be used--

(a) **Form 574** must be used to apply for new base, fixed, or mobile station authorizations governed by this part, to modify or to modify and renew an existing authorization (see § 88.87), to reinstate an expired license, (see

paragraphs (e)(1) and (h) of this section), and to reassign an existing authorization to another person or entity.

(1) Application for a radio system may be submitted on a single Form 574.

(2) If the control station(s) will operate on the same frequency as the mobile station, and if the height of the control station(s) antenna(s) will not exceed 6.1 meters (20 feet) above ground or an existing man-made structure (other than an antenna structure), there is no limit on the number of such stations that may be authorized. Items 1 through 5 of Form 574 must be completed showing the frequency, the station class, the total number of control stations, the emission, and the output power of the highest powered control station. Applicants for all control stations in the 470-512 MHz band must furnish the information requested in Items 1-11 of Form 574.

(3) Applications for frequencies in the 220-222 MHz band must specify the number of frequencies requested and whether their intended use is for 5 or 10-channel nationwide systems, commercial or non-commercial use, 5-channel trunked systems, public safety/mutual aid use, individual data/voice use, or individual data only use. All frequencies in this band will be assigned by the Commission. An applicant in a geographic area for frequencies in this band may not have **any** interest in another pending application in the same geographic area for frequencies in the same category (trunked, individual, individual data, public safety/mutual aid) in that band.

(b) Applications to reassign an existing authorization to another person or entity must be accompanied by a letter from the assignor setting forth his desire to assign all right, title, and interest in and to such authorization, stating the call sign and location of the station, and that the assignor will submit his current station authorization for cancellation upon completion of the assignment. **Form 1046** may be used in lieu of this letter.

(c) Applications for frequencies below 27.5 MHz required by this Section to be filed on Form 574 must be accompanied by **Form 574-B**.

(d) Applications for stations on frequencies above 27.5 MHz in areas where international coordination is required may be accompanied by **Form 574-B**. If the applicant does file Form 574-B, the information on that form will be provided to the coordinating nation by the Commission. If the applicant does not file Form 574-B, the information provided by the Commission to the coordinating nation will be based on assumed technical characteristics determined by the Commission and described in instructions to Form 574. Also see § 1.955 of this chapter.

(e) **Form 405-A** must be used to notify the Commission of a change in the licensee's name or mailing address (see § 88.87(b)), and to notify the Commission that the licensee has discontinued station operation and wishes to cancel the license (see § 88.143).

(f) **Form 703** must be used to change, as by transfer of stock ownership, the control of a corporate licensee.

(g) **Form 572**, Temporary Permit to Operate a Part 88 Radio Station, should be properly executed if the applicant is eligible and desires to operate his station pending the processing of his formal application (See also § 88.147).

(h) **Form 574-R** must be used to apply for renewal of an existing authorization and may be used to apply for reinstatement of an expired license, if the renewal or reinstatement does not involve the modification of the station or system license. (Form 574-R is generated by the Commission and mailed to the licensee approximately sixty (60) days prior to the expiration of the license term.) If the licensee has not received renewal Form 574-R in the mail from the Commission sixty days prior to license expiration, Form 405-A should be used.

(i) Exclusive use overlay (EUO) and licensing freeze applications for the 150-174 MHz and 450-470 MHz bands must be filed on a **Form XXXX**.

(j) **Form 410** must be filed by Canadian licensees desiring to operate in the United States under the terms of Article 2 and 3 of the Convention between the United States and Canada concerning operation of Certain Radio Equipment or Stations (which entered into force May 15, 1952). This form may be obtained from the Department of Communications, Ottawa, Canada. That department should also be consulted by U.S. licensees desiring to operate in Canada. See also, § 1.955 of this chapter.

§ 88.75 Submission and filing of applications.

(a) Applications for private land mobile licenses requiring **both frequency coordination and fees** as set forth at Part 1, Subpart G of this chapter must first be sent to the certified coordinator for the radio service or frequency group concerned. The coordinator will then forward all relevant materials including the fee to the appropriate address in § 0.401(b) of this chapter. A list of the certified frequency coordinators may be obtained from the Federal Communications Commission, Gettysburg, PA, 17326.

(b) Applications for private land mobile licenses requiring **frequency coordination but no fee** must be sent to the certified coordinator for the radio service or frequency group concerned. The coordinator will forward the application to the Federal Communications Commission, Gettysburg, PA 17326.

(c) Applications for private land mobile licenses requiring a **fee but no frequency coordination** must be sent to the appropriate address in § 0.401(b) of this chapter.

(d) All applications for private land mobile licenses that **do not require either frequency coordination or a fee** must be sent to the Federal Communications Commission, Gettysburg, PA 17326.

(e) **Timely requirement.** Unless otherwise specified, an application should be filed at least 60 days prior to the desired date of Commission action. Applications for renewal must be filed no more than 90 days nor less than 30 days prior to the end of the license term. When timely and sufficient

application for renewal of the license has been made, the license will not expire until Commission action on the application has been completed. Applications for reinstatement must be filed no later than 30 days after the expiration date of the license. See § 1.4 of this chapter.

(f) Failure on the part of the applicant to provide all information required by the application form or to supply the necessary exhibits or supplementary statements may constitute a defect in the application.

§ 88.79 Requests for mobile transmitter authorization.

Each application must limit its request for authorized mobile transmitters and paging receivers to:

(a) Mobile transmitters and paging receivers that will be installed and operated immediately after authorization.

(b) Mobile transmitters and paging receivers for which purchase orders have already been signed and that will be in use within eight months of the authorization date.

(c) In the Public Safety Radio Service, to transmitters for which bid orders have been or will be sought and that will be in use within eight months of the authorization date, and to transmitters to be placed in operation more than eight months after the authorization date, pursuant to a specific implementation schedule adopted by the appropriate final authorities of the applicant; and

(d) For operation in the 806-824/851-869 and 896-901/935-940 MHz bands, to transmitters authorized pursuant to § 88.135.

§ 88.83 Supplemental information to be submitted with applications.

Each application received by the Commission must be accompanied by the applicable information listed below:

(a) Evidence of frequency coordination as required by § 88.305.

(b) Description of certain equipment. Description of any equipment proposed to be used if it does not appear on the Commission's current Radio Equipment List, Equipment Acceptable for Licensing, and designated for use under this part.

(c) The environmental assessment required by §§ 1.1307 and 1.1311 of this chapter, if applicable.

(d) Applicants for frequencies in the 806-824/851-869 MHz and 896-901/935-940 MHz bands

(1) In the Public Safety Radio Service, Non-Commercial Radio Service, and General Category must **specify on the application the frequencies** on which the proposed system will operate pursuant to a recommendation by the applicable frequency coordinator. Applicants for SMR only frequencies (see § 88.621) in those bands either may request specific frequencies by including in their applications justification for the frequencies requested or may request the Commission to select frequencies for the system from the SMR Radio Service.

(2) All applicants for **conventional radio systems** must:

(i) Furnish a **list of all radio systems** licensed to them or proposed by them within 64 km. (40 mi.) from the location of the base station transmitter site of the facility for which they have applied.

(ii) Specify the **number of mobile units** to be placed in operation upon grant of the authorization and the number of such units that will be placed in operation within 8 months of the date of grant.

(3) All applicants for **trunked systems** must:

(i) Furnish a **list of all radio systems** licensed to them within 64 km (40 mi.) from the location of the base station transmitter site of the facility for which they have applied;

(ii) Specify the **number of vehicular and portable mobile units** and control stations to be placed in operation within the term of the license.

(e) Applicants for frequencies in the **220-222 MHz** bands must specify the number of frequencies requested and whether their intended use is for nationwide systems, SMR or non-commercial use, public safety/mutual aid, data, trunked or individual channels. All frequencies in this band will be assigned by the Commission.

(f) Any **other statements** or other data specifically required under special circumstances by an applicable section of this part, by the particular form on which the application is filed, or upon request by the Commission.

§ 88.87 Modification of license.

(a) All applications for modification of license must include the number of mobile transmitters and paging receivers in use on the licensed facilities. All licensees must, as part of their license renewal application, report the number of mobile transmitters or paging receivers that are in use on the licensed facilities.

(b) **Major changes**. The following changes in authorized stations **require an application for modification of license**:

(1) Change in frequency.

(2) Change in the type of emission.

(3) Change in power from that authorized.

(4) Change in antenna height from that authorized.

(5) Change in the authorized location or number of base stations, fixed, control or for systems operating on non-exclusive assignments above 150 MHz, a change in the number of mobile transmitters, or a change in the area of mobile operations from that authorized.

(6) Change in the class of a land station, including changing from multiple licensed to shared use or from shared to unshared use.

(7) Any change in ownership, control, or corporate structure.

(c) The following changes in authorized stations **do not require an application for modification of license**:

(1) Change in mailing address of licensee.

(2) Change of name only of licensee, without changes in ownership, control, or corporate structure.

(3) Change in the number and location of station control points or of control stations operating below 470 or above 800 MHz meeting the requirements of § 88.67(a)(2).

(4) Change in the number of mobile units operated by Radiolocation licensees.

(5) Licensees of trunked SMR systems operating above 800 MHz when there is a change in the location or number of fixed, control, or mobile transmitters from that authorized, including area of mobile operations, except where tower or environmental concerns exist.

(6) Any other changes not listed in paragraph (a) of this section.

(d) Unless specifically exempted in § 88.305, requests for modifications listed in paragraph (b) of this section must be submitted **on Form 574 to the applicable frequency coordinator**.

(e) In case of a change listed in paragraph (c)(1) or (c)(2) of this section, the licensee must **notify the Commission immediately**. Notification may be by Form 405-A or by letter. The letter must contain the name and address of the licensee as they appear in the Commission's records, the new name or address, the call signs and classes of all radio stations authorized to the

licensee under this part and the radio service in which each station is authorized. The completed and signed Form 405-A or the letter must be sent to: Federal Communications Commission, Gettysburg, Pennsylvania 17326. Licensees whose licenses are due for renewal and who have received the renewal Form 574-R in the mail from the Commission must use the appropriate boxes on that form to notify the Commission of a change listed in paragraph (c)(1) or (c)(2) of this section.

(f) In the case of a change listed in paragraphs (c)(3), (c)(4), and (c)(5) of this section, the licensee must **notify the Commission within 30 days** of the change. The notice may be filed on FCC Form 574 or may be contained in a letter specifying the nature of the change, the name and address of the licensee as appearing on Commission records, and the call sign, class, and radio service of the station. The notice must be sent to: Federal Communications Commission, Gettysburg, Pennsylvania 17326.

(g) Any change that **requires a fee** as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 1.912(b) or § 1.912(b)(2) of the rules.

§ 88.91 Loading data reports.

(a) **Trunked SMR above 800 MHz.** A base station licensee of a trunked Specialized Mobile Radio system operating above 800 MHz that applies for additional channels to expand an existing system or to construct a new system within 40 miles of its existing system, or a base station licensee of a trunked system applying for its first renewal in a waiting list area for a system licensed before June 1, 1993 must identify on the appropriate application form the number of mobiles and control stations loaded on its system as calculated in paragraph (b).

(b) **Calculation Method.** The number described in paragraph (a) of this section must be calculated according to the average number of mobiles and control stations operating on a licensee's system on the first business day of each of the six months immediately preceding the filing of an application and must be based on the licensee's business records for that period. Alternative calculations will be permitted upon good cause showings of special circumstances.

(c) **Business records** may constitute invoices, customer service agreements, customer lists or any other type of record kept in the ordinary course of business.

(d) The FCC will **use the loading data** required by this section to determine whether the licensee's existing system has a sufficient number of mobiles as required by our Rules to qualify for additional channels or for initial renewal of trunked systems licensed before June 1, 1993.

(e) **SMRs in the 220-222 MHz band** must maintain records of the names and addresses of each customer and the dates that service commenced and terminated. These records must be made available to the Commission upon

request. Such licensees must report at the time of license renewal the number of mobile units being served.

(f) **Non-Commercial trunked system licensees in the 220-222 MHz band** must report at the time of license renewal the number of mobile units being served.

§ 88.95 Operation at temporary locations.

(a) An application for authority to operate a base or a fixed transmitter at temporary locations **must be filed as follows**:

(1) When one or more individual transmitters are to be operated by a licensee as a base station or as a fixed station at unspecified or temporary locations for indeterminate periods, such transmitters may be considered to comprise a single station intended to be operated at temporary locations.

(2) The application must specify the general geographic area within which the operation will be confined. The area may be specified as a city, a county or counties, a state or states or other definable geographic area such as a specified radius in miles of a particular city or known geographic site.

(3) Applications for operation at temporary locations exceeding 180 days must be accompanied by evidence of frequency coordination.

(b) When any unit or units of a base station or fixed station that are authorized for operation at temporary locations actually remain or are intended to remain at the same location for **more than 1 year**, an application for a **separate authorization** specifying the fixed location must be made as soon as possible, but not later than 30 days after the expiration of the 1-year period.

§ 88.103 Grants of applications.

(a) The Commission will **grant an application** for a station authorization without a hearing if it is in proper form, and conforms with all rule requirements, and would serve the public interest, convenience or necessity.

(b) All applications in pending status will be **processed in the order received** by the Commission. If there are more applications (including EUO applications) than can be accommodated on available frequencies, the Commission will grant the applications using the system of random selection described in § 1.972 of this chapter, except as provided in 88.107. An application that is dismissed will lose its place in the processing line.

(c) In the **220-222 MHz** band, applications will first be considered to determine whether they are substantially complete and acceptable for filing. If so, they will be assigned a file number and put in pending status. If not, they will be dismissed.

(d) If an application is **returned for correction** and resubmitted and received by the Commission within 30 days from the date on which it was returned to the applicant, it will retain its place in the processing line. If it is not received within 30 days, it will be dismissed and lose its place in the processing line. A resubmitted application in the 220-222 MHz, 806-824 MHz, 851-869 MHz, 896-901 MHz, and 935-940 MHz bands must be received within 60 days to retain its place in processing line.

(e) The Commission may **grant any application in part**, or add privileges, terms or conditions not requested. When such action is taken without a hearing, the applicant may accept the authorization as granted, or may return it to the Commission along with a written request for a hearing. Any such request for hearing must be made within 30 days from the date of the grant, or from its effective date, if a later date is specified. Upon receipt of a request for hearing, the Commission will vacate the grant and designate the application for hearing in the usual manner.

§ 88.107 SMR waiting lists.

Applications for SMR frequencies in the 806-821/851-866 MHz band that cannot be granted due to a lack of available channels in a particular area will be placed on a waiting list for that area. Waiting lists will consist of two groups. The first group will be comprised of applications from existing licensees who, in the area corresponding to the particular waiting list, operate trunked systems with 70 or more mobile units per channel. The second group will be comprised of applications to establish new systems or to obtain additional channels for conventional systems. Applications will be placed in the appropriate group according to filing dates, with the earliest date receiving the highest ranking. All applications in the first group will receive priority over any application in the second group regardless of filing date. When channels become available as a result of either the Commission's compliance activities, a licensee's voluntary and independent request for license cancellation, or failure by the recipient of a finder's preference to timely submit an application in a form acceptable for filing, the highest ranking application(s) will be granted based on the site specified and the Commission's mileage separation standards. An applicant filing a timely request for a finder's preference that results in the recovery of SMR category channels, and that also timely submits an application in a form acceptable for filing, will receive a dispositive preference for those channels over the highest ranking application(s). Where more than one applicant obtains a preference for the same channel(s), we will grant the license to operate on the channel(s) to one of these applicants through our random selection procedures. See § 1.972 of this chapter. Trunked systems that have had authorized channels cancelled due to failure to meet the loading requirements in §§ 88.285 and 88.287 will not be permitted on the waiting list for a period of six months from the date of the issuance of the superseding license.

§ 88.111 Special temporary authority.

(a) In circumstances requiring the **temporary use of radio facilities**, the Commission may issue special temporary authority for new or modified operations. A request for special temporary authority may be made in letter form signed in accordance with § 1.913 of this chapter. It should be submitted, in duplicate, at least 10 days prior to the date of the proposed operation. However, in cases of emergency involving danger to life or property, or due to damage to equipment, the request may be made by telephone, telegraph or facsimile transmission under the condition that a letter request is submitted within the following 10 days. All requests for special temporary authority must be clear and complete within themselves and may not rely on any pending application. Also see § 1.925 of this chapter.

(b) Every request for special temporary authority must **contain the following information**: name and address of the applicant, need for special action, including a description of any emergency or damage of equipment, type of operation to be conducted (such as field test, dispatching etc.), class of station and name of radio service, location, including geographic coordinates if known, of transmitter and/or mobile area of operations, number of fixed transmitters and number of mobile units, operating frequency, output power of the transmitter, type of emission, description of antenna, including height above ground and power gain.

(c) Requests for special temporary authority to operate for periods **exceeding 180 days** require evidence of **frequency coordination** if such coordination would be required for a regular licensee. Requests for shorter periods do not require coordination and, if granted, will be authorized on a secondary, non-interference basis.

§ 88.115 Mailing address.

Each application must set forth an each licensee and each licensee must furnish the Commission with an address in the United States to be used by the Commission in serving documents or directing correspondence to that licensee. Unless any licensee advises the Commission to the contrary, the address contained in the licensee's most recent application will be used by the Commission for this purpose.

§ 88.119 License term.

(a) Licenses for stations authorized under this part will be issued for a term not to exceed **five years** from the date of the original issuance, modification or renewal. Licensees have an additional (30) days to apply for reinstatement of expired licenses.

(b) **If no application for reinstatement** has been filed as specified in this Part, the authorization automatically cancels on the expiration date specified in the authorization.

(c) Authorizations for stations engaged in **developmental operation** will be issued on a temporary basis for a specific period of time, not to exceed 1 year from date of original issuance, modification or renewal.

(d) **Nationwide and Innovative Shared Use Radio operation authorizations** under this part will be issued for a term not to exceed ten years from the date of the original issuance, modification or renewal.

§ 88.123 Transfer or assignment of station authorization.

(a) **No transfer without Commission consent.** A station authorization and the rights it grants may not be transferred, assigned, or in any manner disposed of to any person, unless the Commission gives its consent in writing.

(b) **No assignment prior to construction.** A license may not be assigned or transferred prior to the completion of construction and commencement of operation of the facility. However, the Commission may give its consent to the assignment or transfer of control of such a license prior to the completion of construction where:

(1) The assignment or transfer does not involve a substantial change in ownership or control of the authorized radio facilities; or,

(2) The assignment or transfer is involuntary due to the licensee's insolvency, bankruptcy, incapacity, or death.

§ 88.127 Partial assignments.

Licensees of constructed systems, except in the 220-222 MHz and 806-809.750/851-854.750 MHz bands, are permitted to make partial assignments of an authorized grant to an applicant proposing to create a new system or to an existing licensee eligible for additional channels. Partial assignments may include both whole channel assignments and narrowband assignments that split a channel. An applicant authorized to expand an existing system or to create a new system with frequencies obtained through partial assignment will receive the assignor's existing license expiration date and loading deadline, if applicable, for the frequencies that are assigned. A licensee that makes a partial assignment of a station's frequencies will not be authorized to obtain additional frequencies for that station for a period of one year from the date of the partial assignment.

§ 88.131 Time by which station must be placed in operation.

(a) **General.** All stations authorized under this part, except as provided in paragraphs (b) or (c) of this section, in §§ 88.135, 88.983 or 88.1013, must be placed in operation within 8 months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

(b) **Trunked Systems.** Licensees of trunked facilities in the 806-824/851-869 MHz and 896-901/935-940 MHz bands must complete construction within one year. If a station is not placed in permanent operation within one year, except as provided in § 88.135, its license cancels automatically and must be returned to the Commission.

(c) **Exclusive Use Overlay.** Stations authorized by an EUO license must be placed in operation within 6 months, except as provided in § 88.135, from the date of grant or the authorizations for the system and EUO cancel automatically and must be returned to the Commission.

(d) **220-222 MHz and Cancelled Channels.** A licensee that loses authorization for some or all of its channels in the 220-222 MHz band due to failure to meet construction deadlines or benchmarks may not reapply for channels in the same category in the same geographic area for one year from the date the Commission takes final action affirming that those channels have been cancelled.

(e) **Placed in Operation.** For purposes of this part, a base station is not considered to be placed in operation unless at least one associated mobile station is also placed in operation, except that at least two mobile stations must be placed in operation for trunked systems.

§ 88.135 Slow growth.

On frequencies above 150 MHz listed in Subpart D, except the 220-222 MHz band, applicants may be authorized a period of up to five (5) years for placing a station in operation in accordance with the following:

(a) The applicant submits justification for an extended implementation period. The justification must include the implementation schedule, including a description of the applicant's proposed system, benchmarks for construction of the proposed base stations (including identification of channels to be "contructed" at each station at each of the indicated benchmarks), and must show that:

(1) The proposed system will require more time than permitted in § 88.131 (twelve months for trunked systems above 800 MHz, six months for EUO systems, eight for other systems) to construct and place in operation because of its purpose, size, or complexity; or

(2) The proposed system is to be a part of a coordinated or integrated area-wide system that will require more time than permitted in § 88.131 (twelve months for trunked systems above 800 MHz, six months for EUO systems, eight for other systems) to plan, approve, fund, purchase, construct and place in operation; or

(3) The applicant is required by law to follow a multi-year cycle for planning, approval, funding and for purchasing the proposed system.

(b) Authorizations under this section are conditioned upon the licensee constructing and placing its system in operation within the authorized implementation schedule and in accordance with an approved implementation schedule. If the licensee fails to construct and place its system in operation within the authorized implementation schedule and in accordance with an approved implementation schedule, all channels not constructed and placed in operation at the base station locations identified in the implementation schedule and all base stations not constructed and placed in operation in accordance with the implementation schedule will be deleted from the licensee's authorization.

(c) In the frequencies above 800 MHz, if after the end of five years, all channels in the licensee's radio service are assigned in the geographic area, authorization for trunked channels not loaded to 70 mobile stations cancels automatically at a rate that allows the licensee to retain one channel for every 100 mobiles loaded, plus one additional channel. Conventional channels not loaded to 70 mobile units may be subject to shared use by the addition of other licensees.

(d) For puroses of this section a system is not considered constructed unless all of the base stations in the system are constructed in accordance with the system desciption provided as per paragraph (a) of this section.

§ 88.143 Discontinuance of station operation.

(a) The license for a station **cancels automatically upon permanent discontinuance** of operations and the licensee must forward the station license to the Commission. Alternatively, the licensee may notify the Commission of the discontinuance of operations of a station by checking the appropriate box on Form 574-R or Form 405-A and requesting license cancellation. Notification of discontinued operation or cancellation must be sent to: Federal Communications Commission, Gettysburg, PA 17326.

(b) For the purposes of this section, any station that has **not operated for 1 year** or more is considered to have been permanently discontinued.

§ 88.147 Temporary permit.

An applicant for a private land mobile station license utilizing an already authorized facility may operate the radio station(s) for a period of up to 180 days under a temporary permit evidenced by a properly executed temporary license certificate (Form 572) after submitting or filing a formal application for station license in accordance with § 88.75, provided that all the antennas employed by control stations are twenty feet or less above ground or twenty feet or less above a man-made structure other than an antenna tower to which it is affixed. When required by § 88.305, applications must be accompanied by evidence of frequency coordination. The temporary operation of stations, other than mobile stations within the Canadian coordination zone,is limited to stations with a maximum of 5 watts effective radiated power (except for

exclusive assignments) and a maximum antenna height of 6.1 meters (20 ft.) above average terrain.

§ 88.151 Conditional permit.

(a) An applicant proposing to operate a new private land mobile radio station or modify an existing station below 150 MHz or on a one one-way paging listed at §§ 88.1063(a) or (b) that is required to **submit a frequency recommendation** pursuant to § 88.305 may operate the proposed station while its application is pending for a period of up to 180 days under a conditional permit upon the filing of an application that complies with § 88.75 if the application is accompanied by evidence of frequency coordination in accordance with §§ 88.305 and 88.309, and provided that the applicant certifies that the following conditions are satisfied:

(1) The proposed station location is south of Line A or west of Line C as defined in § 88.7.

(2) The proposed antenna structure has been previously studied by the Federal Aviation Administration and determined to pose no hazard to aviation safety as required by § 17.4 of this chapter; or the proposed antenna or tower structure does not exceed 6.1 meters (20 feet) above ground level or above an existing man-made structure (other than an antenna structure), if the antenna or tower has not been previously studied by the Federal Aviation Administration and cleared by the FCC.

(3) The grant of the application does not require a waiver of the Commission's Rules.

(4) The applicant has determined that the proposed facility will not significantly affect the environment as defined in § 1.1307 of this chapter.

(5) The applicant has determined that the proposed station affords the level of protection to radio "quiet" zones and monitoring facilities as specified in §§ 88.317 and 88.1113(f)(3).

(b) An applicant proposing to operate an **itinerant station**, or an applicant seeking license modification solely for a change in the number of mobile units and paging receivers (except for systems operating on non-exclusive frequencies above 150 MHz), or an applicant seeking the **assignment** of authorization or transfer of control of a license for an existing station operating below 150 MHz, or in the 929-930 MHz band, may operate the subject station while its application is pending for a period not to exceed 180 days under a conditional permit upon the filing of an application that complies with § 90.75. Conditional authority ceases immediately if the application is returned by the Commission because it is not acceptable for filing. All other categories of applications listed in 88.305(d) are excluded from the provisions of this rule section.

(c) The original conditional licensing **572C Certification Form** must be kept with the station records. The Commission may at any time cancel or modify the

conditional authority without hearing. The applicant assumes all risks associated with operation under conditional authority, the termination or modification of conditional authority, or the subsequent dismissal or denial of its application. Authority reverts back to the original licensee if an assignee or transferee's conditional authority is cancelled.

(d) The transmissions of new stations operating under conditional authority must be identified by a temporary call sign consisting of the prefix "WT" followed by the applicant's local seven digit business telephone number as provided in § 2.302 of this chapter. Transmissions by applicants for the modification, assignment of authorization or transfer of control of an existing station must be identified by the station's call sign.

ASSIGNMENT OF FREQUENCIES

§ 88.171 General.

(a) **Available Frequencies.** The frequencies that ordinarily may be assigned to stations in the services governed by this part are listed in subpart D and E of this part. As provided elsewhere in this part, frequencies assigned to land mobile stations are available either on a shared basis or may be assigned for the exclusive use of a licensee.

(b) All applicants and licensees must **cooperate** in the selection and use of frequencies in order to reduce interference and make the most effective use of the authorized facilities. Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If the licensees are unable to do so, the Commission may impose restrictions including specifying the transmitter power, antenna height, or area or hours of operation of the stations concerned. Further, the use of any frequency at a given geographical location may be denied when, in the judgment of the Commission, its use in that location is not in the public interest; the use of any frequency may be restricted as to specified geographical areas, maximum power, or such other operating conditions, contained in this part or in the station authorization. Lastly, in cases where sanctions may be warranted, the Commission may, inter alia, impose monetary forfeitures.

(c) Frequencies allocated for **Federal Government radio stations** under Executive order of the President may be authorized for the use of stations in these services upon appropriate showing by the applicant that such assignment is necessary for inter-communication with government stations or required for coordination with activities of the Federal Government, and where the Commission finds, after consultation with the appropriate government agency or agencies, that such assignment is necessary.

(d) The radio facilities authorized under this part are intended for use in connection with and as an adjunct to the **primary governmental or business activities** of the licensee.

(e) Persons requesting authority to operate in the band 25-50 MHz should recognize that this band is shared with various services in other countries and that harmful interference may be caused by the propagation of signals in this band from distant stations. No protection from such harmful interference generally can be expected.

(f) Except for those frequencies that are not allocated to the Private Land Mobile Radio Services on a primary basis and those frequencies shared with the Federal Government, frequencies allocated to specific services and listed in the tables in Subpart D may also be available for assignment in services other than those they are allocated to provided that such interservice sharing assignments meet the requirements of § 88.309 or 88.313 of the rules.

(g) International police radiocommunication. Police radio licensees located close to the borders of the United States may be authorized to communicate internationally. Request for such authority must be written and signed and submitted in duplicate. The request must include information as to the station with which communication will be conducted, and the frequency, power, emission, etc., that will be used. If authorized, such international communication must be conducted in accordance with Article 5 of the Inter-American Radio Agreement, Washington, D.C., 1949.

EXCLUSIVE USE/ASSIGNMENT PROTECTION

§ 88.175 Exclusivity.

In the bands above 150 MHz, assignments may be limited on certain channels in a specific geographic area. This may result in a licensee having channel exclusivity in that geographic area. The rules exclusivity vary band-by-band and are set forth in sections 88.179-88.229.

§ 88.179 Exclusive use overlay (EUO) (150-174 MHz, 450-470 MHz).

An applicant may be granted an exclusive use overlay (EUO) license to convert frequencies in the 150-174 MHz and 450-470 MHz bands listed at Subpart D from shared use in a particular geographic area (as defined in the next sentence) to exclusive assignments (unless otherwise noted in § 88.667). No additional licenses will be granted to operate a base or fixed station on the same frequency within 80 km (50 mi) of the base station of an EUO licensee, except with written concurrence of the EUO licensee. The rules for EUO licenses are set forth in this section through § 88.207.

§ 88.183 Protection of existing users by EUO licensees.

Existing licensees with base stations on the same frequency within 80 km (50 mi) of a base station with EUO are co-primary to the EUO licensee, may add additional mobiles (or users with respect to SMRs and Non-Commercial Radio Service licensees selling excess capacity, and existing multiple licensed

facilities), but may not add control stations, fixed stations or base stations without written concurrence from the EUO licensee.

§ 88.187 Preferred existing systems.

A licensee operating a base station is, for the purpose of EUO licensing, a preferred existing system on those frequency(s) at the site of that base station, provided that

(a) The base station operates at least 3 Watts output power; and

(b) If the system was initially licensed between [release date of the NPRM] and [sixty days after the Report and Order], the system has been **constructed and placed in operation for at least one year**; and

(c) If the base station is:

(1) Within 161 km (100 mi) of New York City or Los Angeles (see § 88.1601 for coordinates), the system has at least 70 **mobiles per channel** or channel pair; or

(2) Within 161 km (100 mi) of markets 3-73 listed at § 88.1601, the system has at least 50 mobiles per channel or channel pair, or

(3) More than 161 km (100 mi) from markets 1-75 listed at § 88.1601, the system has at least 20 mobiles per channel or channel pair; or instead of paragraph (c) of this section,

(d) Failure of that system would create an **imminent danger** to the public safety.

§ 88.191 EUO eligibility.

(a) Until February 1, 1996, **only systems that are constructed and operating** are eligible for an EUO license. Also see § 88.187(b).

(b) Any applicant eligible to be licensed on a specific frequency is eligible for an EUO license provided that the application includes the written **concurrence of all preferred existing licensees** (see § 88.187) for the frequencies applied for with base stations located within 80 km. (50 miles) of the proposed base station or the system meets the criteria in paragraph (d) of this section.

(c) **If there is no preferred existing licensee**, then the EUO grant is conditioned on the licensee constructing within six months of the grant of the EUO license and meeting the loading criteria at § 88.273 within eight months of the grant of the EUO license. The license to operate the base station at that frequency will automatically cancel if the system fails to meet the spectrum efficiency standards at § 88.433(a) and (b). Also see § 88.103.

(d) A system is eligible for an EUO license if, instead of or in addition to paragraphs (b) or (c) of this section, failure of that system would create an **imminent danger** to the public safety.

§ 88.195 Temporary licensing freeze.

(a) To facilitate the process of obtaining an EUO license, a licensee may apply (on the same day) to the Commission and an appropriate frequency coordinator to **suspend further licensing** of base stations on a specific frequency within 80 km. (50 miles) of a specific site for a **120 day** period. Applications are handled on a first-come, first-served basis. The freeze will commence on the day that the Commission processes the freeze application. Unless a new freeze is granted, on the day following the expiration of the freeze, pending applications blocked by the freeze may be granted.

(b) A temporary licensing freeze will only be granted if there is **at least one preferred existing licensee** on the appropriate channel with base stations within 80 km. (50 miles).

§ 88.199 Grant of temporary licensing freeze.

The Commission will grant an application for a temporary licensing freeze (see § 88.183 for limitations of the freeze) in the 150-174 MHz or 450-470 MHz bands provided that all of the following are satified:

(a) The applicant is **eligible** to use the frequencies applied for;

(b) Those **frequencies are available** for exclusive assignment (see § 88.179);

(c) The application includes statements of written **concurrence** from either

(1) at least half the preferred existing licensees licensed 30 days before the application was filed (see § 88.187) on the appropriate channel with base stations within 80 km (50 mi), or

(2) preferred existing licensees on the appropriate channel with base stations within 80 km (50 mi) with a total of at least half the overall number of mobiles licensed 30 days before the application was filed on the same frequencies in the same geographic area.

§ 88.207 Additional channels, spectrum efficiency standards, and EUO.

(a) EUO licenses granted pursuant to § 88.191(b) will be conditioned on the following: **if the licensee obtains additional channels** or additional base station sites in any band under Subpart D **within 25 km.** (15.5 miles) of the base station covered by the EUO license, the EUO system must meet the **spectrum efficiency standard** within 6 months of the construction deadline for the additional channels or additional base stations.

(b) For purposes of this section, any base station managed or licensed by a system manager for the EUO licensed system will be treated as if licensed to the EUO licensee.

(c) Any base/channel failing to meet the provisions of (a) **automatically cancels**.

§ 88.211 Exclusive use in the 220-222 MHz band.

Except for nationwide assignments, the separation of co-channel base stations must be at least **120 kilometers** (75 miles). Shorter separations will be considered on a case-by-case basis upon submission of a technical analysis indicating that at least a 10 dB protection will be provided to an existing station's 38 dBu signal level contour.

§ 88.215 SMR-only frequencies above 800 MHz.

Systems authorized on frequencies in the 806-821/851-866 MHz and 896-901/935-940 MHz bands in the SMRS Category will be afforded protection solely on the basis of fixed mileage separation criteria. Only co-channel interference between base station operations will be taken into consideration. Adjacent channel and other types of possible interference will not be taken into account. The ordinary separation between co-channel systems will be **113 km** (70 miles), except:

(a) Except as indicated in paragraph (d) of this section, no trunked system will be less than 169 km (105 miles) distant from co-channel trunked systems authorized 1 kw ERP on any of the following mountain top sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (**California**)

(b) The separation between certain co-channel trunked systems located at high antenna sites in the **State of California north** of 35° North Latitude and west of 118° West Longitude will be determined as follows:

(1) Required co-channel separations between common antenna sites are given by Table B-1. A channel group assigned to a station on a site listed in the vertical column may not be re-assigned to a station on a site listed in the horizontal column if there is an "X" in the box created by the intersection of the vertical and horizontal lines. The geographic coordinates listed in the table represent an average for each particular site; all locations within one mile of the coordinates will be considered to be at that site.

(2) Required co-channel separations involving antenna sites not listed in Table B-1 will be determined by Commission staff on a case by case basis. The interference potential of proposed assignments will be evaluated considering parameters such as antenna height, effective radiated power, terrain irregularities, and market conditions.

TABLE B-1: CO-CHANNEL SEPARATIONS BETWEEN COMMON ANTENNA SITES IN NORTHERN CALIFORNIA

North Latitude	West Longitude	Site Name	Site Number	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34
38-03-40	122-36-17	Big Rock Ridge	1	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x		x	x	x	x	x	x											
37-55-44	122-35-11	Mt. Tamalpais	2	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x		x	x	x	x	x	x											
37-50-57	122-29-56	Wolfback Ridge	3	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x							x											
37-52-54	121-55-05	Mt. Diablo	4	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x		x	x	x	x	x	x	x	x									
37-51-12	122-12-30	Grizzley Peak	5	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x			x	x	x	x	x	x										
37-52-58	122-13-11	Vollmer Peak	6	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x		x	x	x	x	x	x	x										
37-51-00	122-11-30	Roundtop	7	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x		x	x	x	x	x	x	x										
37-43-33	122-24-52	Clay Jones Bldg	8	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x			x			x												
37-41-21	122-26-08	San Bruno Mtn.	9	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x						x												
37-24-39	122-18-20	Skeggs Peak	10	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x		x										
37-19-13	122-08-33	Black Mountain	11	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x		x										
37-10-37	121-54-24	Mt. Umunnum	12	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x		x										
37-07-09	121-49-58	Mt. Chual	13	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x		x										
37-06-40	121-50-29	Loma Prieta	14	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x		x										
36-31-45	121-36-24	Toro Peak	15										x	x	x	x	x	x	x														x				
37-29-15	121-52-03	Mission Ridge	16	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x						x	x	x	x									
40-15-46	122-05-37	Tuscan Buttes	17																	x	x	x	x	x	x												
39-51-50	121-41-20	Forest Ranch	18				x		x	x										x	x	x	x	x	x												
39-12-17	121-49-02	Sutter Buttes	19	x	x		x	x	x	x	x									x	x	x	x	x	x	x	x										
39-08-01	121-05-58	Wolfe Mtn.	20	x	x		x	x	x	x										x	x	x	x	x	x	x	x										
38-52-15	121-07-39	Chantry Hill	21	x	x		x	x	x	x										x	x	x	x	x	x	x	x										
38-24-20	122-06-30	Mt. Vaca	22	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x	x	x	x	x	x	x										
38-01-15	120-35-06	Fowler Peak	23	x	x		x	x	x	x										x		x	x	x	x	x	x	x	x								
37-30-31	121-22-26	Mt. Oso	24	x	x		x	x	x	x			x	x	x	x	x			x		x	x	x	x	x	x	x	x	x							
37-32-32	120-03-45	Mt. Bullion	25				x		x	x										x				x	x	x	x	x	x	x							
37-04-10	119-25-39	Meadow Lakes	26				x																			x	x	x	x	x	x	x	x	x	x	x	x
36-44-38	119-19-59	Bear Mtn.	27				x																			x	x	x	x	x	x	x	x	x	x	x	x
36-18-10	120-24-03	Joaquin Ridge	28															x								x	x	x	x	x	x	x	x	x	x	x	x
36-17-07	118-50-19	Blue Ridge	29																								x	x	x	x	x	x	x	x	x	x	x
35-38-29	118-47-08	Pheasant Hill	30																										x	x	x	x	x	x	x	x	x
35-33-09	118-49-20	Granite Peak	31																										x	x	x	x	x	x	x	x	x
35-17-17	119-30-55	Elk Hill	32																										x	x	x	x	x	x	x	x	x
35-17-27	114-45-48	Mc Krittrick Pk	33																										x	x	x	x	x	x	x	x	x
35-16-51	119-44-52	Mc Krittrick Pk	34																										x	x	x	x	x	x	x	x	x

(c) Except as indicated in (d), SMR trunked systems located in the **State of Washington** at the following locations listed in Table B-2 will be separated from co-channel systems by a minimum of 169 km (105 miles). Locations within one mile of the geographic coordinates listed in the table will be considered to be at that site.

Table B-2

Site name	North latitude	West longitude
Buck Mountain	47-47-06	122-59-30
Capitol Peak	46-58-22	123-08-17
Cougar Mountain	47-32-40	122-06-30
Cultus Mountain	48-25-31	122-08-54
Devils Mountain	48-21-53	122-16-02
Gold Mountain	47-32-52	122-46-52
Grass Mountain	47-12-15	121-47-38
Green Mountain	47-33-41	122-48-27
Gunsite Ridge	48-03-23	121-51-37
Lyman Mountain	48-35-42	122-09-35
Maynard Hill	48-00-59	122-55-31
McDonald Mountain	47-20-12	122-51-26
Mount Constitution	48-40-48	122-50-24
North Mountain	47-19-08	123-20-44
Rattlesnake Mountain	47-28-10	121-49-13
Spar Pole Hill	47-02-52	122-08-35
Squak Mountain	47-30-15	122-03-30
Three Sisters Mountain	47-07-20	121-53-30
Tiger Mountain	47-30-14	121-58-28

(d) **40/22 dBu Shortspacing**. Table B-3 indicates permissible distances between co-channel systems separated by less than 113 km (70 miles). Applicants seeking to be licensed for systems located at distances less than those prescribed in the table are required to secure a waiver and to file with their license application a certificate of service indicating that, concurrent with the filing of the application with the Commission, all co-channel licensees within the applicable area were served with a copy of the application and all attachments thereto. Such licensees served with a copy of the application may file an opposition to the application within 30 days from the date the application is filed.

Table B-3
Distance (km) of Proposed Facility from Existing Facility 1/ 2/

Proposed Facility*

DHAAT**		ERP (watts)								
(m)	(ft)	1000	800	600	500	400	300	200	100	50
30.5	100	108	105	101	98	95	92	87	80	75
61	200	113	112	107	105	102	99	95	89	83
91.5	300	113	113	113	111	108	105	101	95	89
122	400	113	113	113	113	112	109	105	99	93
152.5	500	113	113	113	113	113	112	108	102	97
183	600	113	113	113	113	113	113	110	104	99
213.5	700	113	113	113	113	113	113	113	107	101
244	800	113	113	113	113	113	113	113	109	103
274.5	900	113	113	113	113	113	113	113	112	105
305	1000	113	113	113	113	113	113	113	113	108

* Applicants whose exact ERP and HAAT are not reflected in the table must use the next highest figure shown. Distances shown are in kilometers.

** The DHAAT is defined as the average of the antenna heights above average terrain from 3 to 16 km (2 to 10 miles) from the proposed site along a radial extending in the direction of the existing station and the radials 15 degrees to either side of that radial.

1/ Separations for trunked systems on Santiago Peak, Sierra Peak, Mount Lukas, and Mount Wilson (California) and the locations in the State of Washington listed in § 88.215(c) are 56 km (35 miles) greater than those indicated in the table above. In the event of a conflict between this table and § 88.215(b)(2), the latter will control.

2/ The distances shown are based on a non-overlap of the 22 dBu interference contour of the proposed station with the 40 dBu service contour of the existing station(s). No consideration has been given between the 40 dBu service contour of the proposed station and the 22 dBu interference contour of existing station(s).

(e) **Shortspacing with concurrence**. The separation between co-channel systems may be less than the separations defined above if an applicant submits with its application letters of concurrence indicating that the applicant and each co-channel licensee within the specified separation agree to accept any interference resulting from the reduced separation between their systems. Each letter from a co-channel licensee must certify that the system of the concurring licensee is constructed and fully operational. The applicant must also submit with its application a certificate of service indicating that all concurring co-channel licensees have been served with an actual copy of the application.

(f) **Modification of Short-spaced facility**. A station located closer that the distances provided in paragraphs (a) and (c) of this section to a

co-channel station than was authorized as short-spaced under paragraph (d) of this section will be permitted to modify its facilities as long as the station does not extend its 30 dBu contour beyond its maximum 30 dBu contour (i.e., the 30 dBu contour calculated using the station's maximum power and antenna height at its original location) in the direction of the short-spaced station.

§ 88.219 Trunked and loaded conventional systems on non-SMR frequencies.

40/30 dBu. Trunked systems and conventional systems that have met the loading level necessary for channel exclusivity (see §§ 88.285-88.289) authorized on frequencies in the Public Safety Radio Service (except for those systems that have participated in a formal regional planning process as described in § 88.831), Non-Commercial Radio Service and General Category will be protected solely on the basis of predicted contours. Coordinators will attempt to provide a 40 dBu service contour and to limit co-channel interference levels to 30 dBu over an applicant's requested service area. This would result in a mileage separation of 70 miles for typical system parameters. Applicants should be aware that in some areas, e.g., Seattle, Los Angeles, and northern California, separations greater than 70 miles may be appropriate. Separations may be less than 70 miles where the requested service areas, terrain or other factors warrant reduction. In the event that the separation is less than 70 miles, the coordinator must indicate that the protection criteria have been preserved or that the affected licensees have agreed in writing to the proposed system. Only co-channel interference between base station operations will be taken into consideration. Adjacent channel and other types of possible interference will not be taken into account.

§ 88.223 Non-fully loaded conventional systems.

Conventional systems authorized on frequencies in the Public Safety Radio Service (except for those systems that have participated in a formal regional planning process as described in § 88.831), Non-Commercial Radio Service, and General Category that have not met the loading levels necessary for channel exclusivity will not be afforded co-channel protection.

§ 88.227 Separation requirements between 221.0025-221.1975 MHz receivers and 220.8025-220.9725 MHz transmitters.

Base station receivers utilizing assigned frequencies 220.0025-220.1975/221.0025-221.1975 MHz will be geographically separated from

those base station transmitters utilizing frequencies removed 200 kHz or less assigned from 220.8025-220.9725/221.8025-221.9725 MHz as follows:

Table B-4

Separation distance (kilometers)	Effective radiated power (watts)*
0.0 - 0.3	**
0.3 - 0.5	5
0.5 - 0.6	10
0.6 - 0.8	20
0.8 - 2.0	25
2.0 - 4.0	50
4.0 - 5.0	100
5.0 - 6.0	200
Over 6.0	500

* Transmitter peak envelope power must be used to determine effective radiated power.

** Stations separated by 0.3 km or less will not be authorized.

§ 88.229 Finder's preference.

Notwithstanding any other provisions of this Part, any eligible person may seek a dispositive preference for a channel it cannot obtain by direct application because of existing co-channel authorizations. To obtain this preference, finders must submit information that ultimately leads to the recovery of channels for failure of existing licensees to comply with various provisions of §§ 88.131, 88.135 or 88.143. Preferences will not apply to channels encompassed by the National Plan for Public Safety (the 821-824/866-869 MHz channels) or any other channels identified in a Regional Public Safety Plan -- unless the requested preference is accompanied by a written statement from the relevant Regional Public Safety Planning Committee indicating that the committee concurs with the request. This preference may also be awarded to any person who arranges for an existing licensee to voluntarily request license cancellation because the licensee anticipates that it will be unable to timely construct and place its licensed facilities in operation. See §§ 88.131, 88.135, or 88.143. In the instance of such consensual preferences, both finder and licensee must certify that they have neither given nor received any direct or indirect compensation in connection with the requested license cancellation, and the finder will assume the former licensee's deadline for constructing and placing the licensed facility in operation.

(a) **Eligibility for preference** - The recipient of a finder's preference must be eligible for the channels targeted by the finder's request on either a primary basis or through intercategory sharing, except that a finder's preference for occupied channels in the 800 MHz Public Safety Radio Service will only be available to Public Safety Radio Service eligibles.

(b) **Timeliness of finder's request** - A finder's preference request based on a construction or placed-in-operation violation will not be acceptable for filing until 180 days after the construction deadline of the target licensee. The preference will not apply to any case scheduled for regular review during the Private Radio Bureau's normal compliance activities or to any case under Commission review or investigation. A finder that files a timely preference request that results in a channel recovery, and that also files an application with the Commission within 90 days of the award letter date in a form acceptable for filing, will receive a dispositive preference for the recovered channel(s). Where more than one applicant obtains a preference for the same channel(s), we will grant the license to operate on the channel(s) to one of these applicants through our random selection procedures. See § 1.972 of this chapter.

(c) **Contents of request** - The finder's preference request should be mailed to-- Federal Communications Commission, Feeable Correspondence, P.O. Box 358305, Pittsburgh, PA 15251-5305. See § 1.1102(14) of this chapter. The request must contain detailed information to establish a prima facie violation, including: the name and address of the licensee allegedly violating the applicable rules; the licensee's call sign, frequencies and location of the licensed facility; the Commission Rule(s) that the licensee is allegedly violating, including the dates or benchmarks the licensee has failed to meet; and a detailed statement as to the specific basis for the applicant's knowledge that the licensee is violating the rules specified in this section. General and conclusory statements will result in the summary dismissal of any such request. All preference requests must be in the form of a sworn affidavit or a declaration dated and subscribed by the person as true under penalty of perjury as set forth in § 1.16 of this chapter. All preference requests must certify that a complete copy of the preference request has been served on the target licensee. See § 1.47 of this chapter.

CHANNEL/FREQUENCY ASSIGNMENTS

§ 88.231 Channel pairing

(a) In the 152.270-152.465/157.530-157.725 MHz range, the frequencies listed in subpart D may be assigned in pairs with the separation between base and mobile frequencies being **5.26 MHz**. A mobile station may be assigned the frequency that would normally be assigned to a base station for single-frequency operation. However, this single-frequency operation may be subject to interference that would not occur to a two-frequency system.

(b) In the 220-222 MHz band, base station frequencies are taken from the 220-221 MHz band with corresponding mobile and control station frequencies being **1 MHz** higher and taken from the 221-222 MHz band.

(c) In the Public Safety Radio Service, base stations may be authorized to operate **on a secondary basis** on frequencies below 450 MHz that are available to mobile stations.

(d) In the 450-470 MHz band, the frequencies are ordinarily assigned in pairs, with the mobile station transmit frequency **5 MHz** above the paired base station transmit frequency.

(e) In the 470-512 MHz band, the frequencies are ordinarily assigned in pairs with the mobile station transmit frequency **3 MHz** above the paired base station transmit frequency.

(f) In the 806-824/851-869 MHz band, frequencies will be assigned in pairs, with mobile and control station transmitting frequencies taken from the 806-824 MHz band with corresponding base station frequencies being **45 MHz** higher and taken from the 851-869 MHz band.

(g) In the 896-901/935-940 MHz band, frequencies will be assigned in pairs, with mobile and control station frequencies taken from the 896-901 MHz band with corresponding base station frequencies being **39 MHz** higher and taken from the 935-940 MHz band.

§ 88.235 Multichannel systems.

(a) **220-221/221-222 MHz.** Trunked systems will be assigned as paired sets of up to 5 channel pairs, each channel pair separated by 150 kHz from the previous pair.

(b) **806-821/851-866 MHz.**

(1) **Multichannel systems**, including trunked systems, will be assigned as paired sets of up to 5 channel pairs, each channel pair separated by one MHz from the previous pair except

(2) The frequencies 809.75-816/854.75-856 MHz will be assigned as **single channel pairs**.

(3) For stations located within 70 miles of **Chicago** (41-52-28 N, 87-38-22 W), for the frequencies 816-821/861-866 MHz, contiguous assignments are available at 816.0125-816.2375/861.0125-861.2375 MHz, and paired sets of up to 5 channel pairs, each channel pair separated by 900 kHz from the previous pair are available starting at 816.2625/861.2625 MHz.

(4) In the **U.S./Canadian border area** (See § 88.811)

Region	Spacing between channels in a 5-channel group
1, 4, 5, 6	750 kHz
2	450 kHz
3, 7, 8	1 MHz

Region 3 also has ten (10) contiguous channels in each of the two allocated sub-bands.

(c) **896-901/935-940 MHz.**

(1) Multichannel systems, including trunked systems, will be assigned as paired sets of up to 10 channel **contiguous pairs**, for SMRs and 5 channel contiguous pairs in the Non-Commercial Radio Service and General Pool, except

(2) In the Non-Commercial Radio Service and General Pool multichannel systems may be assigned as paired sets of up to 10 channel pairs, each **channel pair separated** by 62.5, 500 or 562.5 kHz from the previous pair.

§ 88.239 Number of frequencies and systems assignable.

There is no limit on the number of frequencies or systems that may be assigned to a licensee except those stated in sections 88.243-88.259 below.

§ 88.243 Limits on shared channels in the 25-50 MHz, 150-174 MHz, and 450-470 MHz bands.

Normally only one frequency or pair of frequencies in the paired mode of operation from the frequencies listed in Subpart D in the Non-Commercial and SMR services, and two frequencies or pairs of frequencies in the paired mode of operation in the Public Safety Radio Service will be assigned on a non-exclusive basis for operations by a single applicant in a given area. The assignment of an additional frequency or pair of frequencies will be made only upon a satisfactory showing of need. Frequencies used for mobile repeater operations do not count towards this limit. There are no limitations on exclusive use overlay licenses beyond those specified at §§ 88.179-88.207.

§ 88.245 Bandwidth reductions in the 150-174 MHz, 421-430 MHz, and 450-470 MHz bands.

(a) On the date a system must meet the spectrum efficiency standards stated in § 88.433, a licensee **keeps one channel pair** per original channel assignment. Other channel pairs automatically cancel, except:

(b) for systems meeting the spectrum efficiency standards at § 88.433 two years before the appropriate deadline, a licensee may **keep up to two unloaded channel pairs**; or

(c) for systems using **non-standard bandwidth**, exceeding the required number of voice links (see § 88.433(a)) by at least 25 percent, a licensee may keep up to two unloaded wideband channel pairs.

§ 88.247 Number of frequencies in the 806-821/851-866 MHz and 896-901/935-940 MHz bands assignable for conventional systems.

(a) Conventional systems of communication will be authorized on the basis of a minimum loading criterion of **70 mobile stations for each channel** authorized.

(b) A licensee may apply for **additional frequency pairs** if its authorized conventional channel(s) is occupied to 70 mobiles. Applications may be considered for additional channels in areas where spectrum is still available and not applied for, even if the already authorized channel(s) is not loaded to 70 mobile units, upon an appropriate demonstration of need.

(c) The **maximum number** of frequency pairs that may be assigned to a licensee for operation in the conventional mode in a given area is five (5).

(d) No licensee in the Public Safety or Non-Commercial Radio Services will be authorized an additional frequency pair for a conventional system within **40 miles** of an existing conventional system, except where:

(1) The additional frequency pair is justified on the basis of the requirements of the proposed user; or,

(2) The licensee's existing frequency pair(s) is loaded to prescribed levels.

(e) No licensee will be authorized frequencies for a conventional system if that licensee is operating an unloaded trunked system or has an application pending for a **trunked system** in the same band as the requested conventional system **within 40 miles** of the requested conventional system.

§ 88.251 Number of trunked frequency pairs and trunked systems in the 806-821/851-866 MHz and 896-901/935-940 MHz bands.

(a) The **maximum number of frequency pairs** that may be assigned at any one time for the operation of a trunked radio system is twenty, except the maximum number of frequency pairs that will be assigned from the 806-821/821-866 MHz band to an SMR applicant at any one time is five. The maximum number of frequency pairs that will be assigned from the 896-901/935-940 MHz band to an SMR applicant at any one time is ten.

(b) No licensee in the Public Safety or Non-Commercial Radio Services will be authorized an additional trunked system within **40 miles** of an existing trunked system, except where:

(1) The additional trunked system is justified on the basis of the requirements of the proposed user; or,

(2) The licensee's existing trunked system is loaded to at least 70 mobile and control stations per channel; or,

(3) A licensee of an SMR system in the 806-821/851-866 MHz bands seeks authorization to operate an SMR system in the 896-901/935-940 MHz bands.

(c) Except as provided in § 88.287, an applicant seeking to expand a trunked system must have a loading level of 70 mobiles per channel on the existing system that is the subject of the expansion request.

§ 88.255 Wide-area operations in the 806-821/851-866 MHz and 896-901/935-940 MHz bands.

(a) **Wide area systems** may be authorized on an appropriate showing of need to eligibles in the Public Safety or Non-Commercial Radio Services. Remote or satellite stations of wide area systems in the Public Safety Radio Service or by essential public service utilities may be authorized on a primary basis if such stations are the first to be authorized in their area of operation on the frequency or group of frequencies. Remote or satellite stations of wide area systems by other licensees will be authorized only on a secondary, non-interference basis to co-channel licensees. To determine system loading, the total number of mobile units and control stations operating in the wide-area system will be counted with respect to the total number of base station frequencies assigned to the system.

(b) **Regional, statewide, or ribbon configuration systems** may be authorized upon an appropriate showing of need to eligibles in the Public Safety or Non-Commercial Radio Services . In a ribbon, regional or statewide system, a mobile station will be counted for channel loading purposes only for the base station facility in the geographic area in which it primarily operates. If this cannot be determined, it will be counted fractionally over the number of base station facilities with which it communicates regularly.

§ 88.259 Number of systems authorized in the 220-222 MHz band in a geographical area.

No licensee will be authorized more than one system in the 220-222 MHz band in a single category (i.e., one non-commercial nationwide system [either 5 or 10-channel], one commercial nationwide system, one 5-channel trunked system, one data-only local system of 1-5 channels, one unrestricted non- trunked local system of 1-5 channels, or one public safety/mutual aid local system of 1-5 channels) within 64 kilometers (40 miles) of an existing system authorized to that licensee in the same category, unless the licensee can demonstrate that the additional system is justified on the basis of its communications requirements. For frequencies available in the Non-Commercial Radio Service, only mobiles used by the licensee count towards loading

LOADING STANDARDS

§ 88.271 General.

Mobile loading is the number of mobile stations associated with an authorized base station operation. For purposes of measuring loading, the term "mobile station" includes vehicular and portable mobile units and control stations. Loading is used in this part for several related purposes. It is used to measure the level of usage of base stations and frequencies. In certain cases, if the level of usage as measured by mobile loading does not reach a minimum level by a certain date, then the authorization for channels will automatically cancel. Loading may be used to cap the number of users sharing a particular channel in a geographic area. Loading may be used to justify channel exclusivity by a licensee over geographic area. Loading may also be used to determine the maximum number of channels that may be authorized to a licensee in a geographic area.

§ 88.273 Loading standards for the 150-174 MHz and 450-470 MHz bands.

(a) A licensee operating a base station within 100 miles of New York City or Los Angeles (see § 88.1601 for coordinates) with at least 70 mobiles per channel or channel pair, within 100 miles of markets 3-75 listed at § 88.1601 with at least 50 mobiles per channel or channel pair, or 20 mobiles per channel or channel pair at any other site, meets the **loading requirements** for the 150-174 MHz and 450-470 MHz bands. See §§ 88.179-203.

(b) For purposes of this section, **channel is defined** as the maximum amount of spectrum permitted per voice link, pursuant to the spectrum efficiency standards at 88.433 for new and existing systems.

(c) **Overlapping markets**. If a base station is located within both 100 miles of New York or Los Angeles and 100 miles of another of the top 75 markets listed at § 88.1601, then the loading standard for that base station is 70 mobiles per channel or channel pair.

(d) For purposes of this section and § 88.277, loading of **Non-Commercial** licensees selling excess capacity will only include those mobile units for internal use of the licensee.

§ 88.277 Loading standards for EUO wide-area systems.

(a) Wide area systems may be authorized on an appropriate **showing of need**. Remote or satellite stations of wide area systems in the Public Safety Radio Service or by essential public service utilities may be authorized on a primary basis if such stations are the first to be authorized in their area of operation on the frequency or group of frequencies. Remote or satellite stations of wide area systems by other licensees will be authorized only on a secondary, non-interference basis to co-channel licensees. To determine system loading, the total number of mobile units and control stations

operating in the wide-area system will be counted with respect to the total number of base station frequencies assigned to the system.

(b) Licensees not qualifying for paragraph (a) of this section may operate wide area system and have every site protected according to § 88.203. Those **multiple site systems** are subject to the following per channel loading standards:

(1) The loading requirement for a system with two sites more than 50 km (31 miles) apart (and both sites are inside or outside an urban area (161 km (100 mi) of a market listed at § 88.1601), is double that of a single site system.

(2) The loading requirement for a system with three or more sites is [the loading requirement for a single site system] times [the ratio of the total area protected from additional licensing for the multiple site system to the area protected for a single site system]. The ratio used will be a whole number, rounding up for fractions of two-thirds or more.

(3) If some of the base station sites of a system are located in an urban area and others are located within a rural market, then the loading standard is pro rated, based on the proportion of base station sites in each loading category.

§ 88.285 Loading standards for non-rural trunked systems in the 806-824/851-869 MHz and 896-901/935-940 MHz bands.

(a) Each applicant for a trunked system must certify that a minimum of 70 mobiles for each channel authorized will be placed in operation within five years of the initial license grant. Except as provided in paragraph (b) of this section, if at the end of five years a trunked system is not loaded to the prescribed levels and all channels in the licensee's radio service are assigned in the system's geographic area, authorization for trunked channels not loaded to 70 mobile stations cancels automatically at a rate that allows the licensee to retatin one channel for every 100 mobile loaded, plus one additional channel. If a trunked system has channels from more than one radio service, General Category channels are the first channels considered to cancel automatically. All licenses authorized initially before June 1, 1993, and within their original license term or are within the term of a two-year authorization granted in accordance with paragraph (b) of this section are subject to this condition. A licensee that has had authorized channels cancelled due to failure to meet the above loading requirements will not be authorized to obtain additional channels to expand the same system for a period of six months from the date of cancellation.

(b) For trunked SMR systems licensed in the 896-901/935-940 MHz band, if at the end of the initial five-year license term the licensee of such a trunked system has not satisfied the loading requirements of paragraph (a) of this section, the licensee requesting renewal of its license will be granted a renewal for only a two-year period. Regardless of the date of the two-year renewal, the licensee will be required to comply fully with the minimum

requirements set forth in paragraph (a) of this section at the end of the two-year renewal term.

§ 88.287 Loading standards for rural trunked systems in the 806-824/851-869 MHz band.

In rural areas, a licensee of a trunked system may request to increase its system capacity by five more channels than it has constructed without meeting the loading requirements specified in § 88.285. A rural area is defined for purposes of this section as being beyond a 100-mile radius of the designated centers of the following urbanized areas, as well as those areas that have a waiting list. The identified urbanized areas are: New York, NY; Los Angeles, CA; Chicago, IL; Philadelphia, PA; San Francisco, CA; Detroit, MI; Boston, MA; Houston, TX; Washington, DC; Dallas-Fort Worth, TX; Miami, FL; Cleveland, OH; St. Louis, MO; Atlanta, GA; Pittsburgh, PA; Baltimore, MD; Minneapolis-St. Paul, MN; Seattle WA; San Diego, CA; and Tampa-St. Petersburg, FL. The coordinates for the centers of these areas are referenced in § 88.1601. Where waiting lists determine whether an area is rural, the designated centers of those areas will be identified on the actual waiting lists released by the Commission. If a waiting list is later established in a rural area, licensees who have acquired additional channels pursuant to this paragraph will be subject to the automatic cancellation provisions for non-urban systems (see § 88.285) at the end of one year from the date the area first appears on a Commission waiting list, or at the end of their license term, whichever is longer.

§ 88.289 Loading standards for conventional systems in the 806-824/851-869 MHz and 896-901/935-940 MHz bands.

Where an applicant shows that a channel will be loaded to 70 mobile stations, that channel will be made available to that applicant for its exclusive use in the area in which it proposes to operate. If the showing made justifies the assignment of more than one channel to the applicant, additional frequencies will be authorized. Where a licensee does not load a channel to 70 mobiles the channel will be available for assignment to other licensees.

§ 88.293 Loading standards for the 470-512 MHz band.

(a) Except as provided in paragraph (b) of this section, the **maximum channel loading** on frequencies in the 470-512 MHz band is as follows:

(1) 50 units in the Public Safety Radio Service.

(2) 70 units in the Non-Commercial Radio Service.

(3) 90 units for SMRs.

(b) If a licensee has **exclusive use of a frequency**, then the loading standards in paragraph (a) may be exceeded. If it is a shared channel, the

loading standards can be exceeded upon submission of a signed statement by all those sharing the channel agreeing to the increase.

(c) Loading standards will be applied in terms of the number of units **actually in use or to be placed in use** within 8 months following authorization. A licensee will be required to show that an assigned frequency pair is at full capacity before it may be assigned a second or additional frequency pair. Channel capacity may be reached either by the requirements of a single licensee or by several users sharing a channel. Until a channel is loaded to capacity it will be available for assignment to other users in the same metropolitan area. Following authorization, the licensee must notify the Commission either during or at the close of the 8 month period of the number of units in operation. In the Non-Commercial Radio Service, if the base station facility is to be used by more than a single licensee, the frequency assigned to it will not be reassigned for use by another facility in that metropolitan area for a period of 12 months, provided that the facility is constructed within 90 days from the date of the first grant, meets the loading standards to at least 50 percent within 9 months, and meets all loading standards within 12 months.

FREQUENCY COORDINATION

§ 88.305 Frequency coordination requirements.

Except for applications listed in paragraph (d) of this section, each application for a new frequency assignment, for a change in existing facilities as listed in § 88.87(a), or for operation at temporary locations in accordance with § 88.95, must include a showing of frequency coordination as set forth below. An application to reinstate a license expired for more than thirty (30) days will be considered as a request for a new frequency assignment.

(a) The coordination must include **a statement from an applicable frequency coordinator** recommending specific frequencies. The coordinator's recommendation may appropriately include comments on technical factors such as power, antenna height and gain, terrain, and other factors that may serve to mitigate potential interference. The specific frequencies must be available for assignment in accordance with loading standards and mileage separations contained in this part.

(b) Any **recommendation is advisory** in character and is not an assurance that the Commission will grant a license for operation on that frequency. Therefore, applicants are strongly advised not to purchase radio equipment operating on specific frequencies until a valid authorization has been obtained from the Commission.

(c) Applications for facilities near the **Canadian border** north of line A or east of line C in Alaska may require coordination with the Canadian government. See Section 1.955 of this chapter.

(d) **Exceptions**. The following applications need not be accompanied by evidence of frequency coordination:

(1) Applications for frequencies below 25 MHz.

(2) Applications for a Federal Government frequency.

(3) Applications for fixed operations in the 72-76 MHz band. See 88.1189.

(4) Applications for a frequency to be used for developmental purposes.

(5) Applications requesting a frequency designated for itinerant operation only.

(6) Applications for radiolocation operations.

(7) Applications for SMR only frequencies. See 88.621.

(8) Applications indicating license assignments such as change in ownership, control or corporate structure if there is no change in technical parameters.

(9) Applications for mobile stations if the frequency pair is assigned to a single system on an exclusive basis in the proposed area of operation.

(10) Applications for control stations operating below 470 or above 800 MHz and meeting the requirements of § 88.67(a)(2).

(11) Applications for frequencies in the 216-220, 220-222 and 1427-1435 MHz bands.

(12) Applications timely-filed by recipients of a finder's preference, where the applicant intends to operate at the same site location, and with the same technical parameters as the prior licensee.

(13) Applications for Innovative Shared Use Radio operations.

(e) The following applications need not be accompanied by evidence of frequency coordination, but a copy of these applications must be sent to an applicable frequency coordinator at the same time that they are sent to the Commission: Applications for modification of license that involve a change in the number of mobile transmitters or paging receivers from that authorized as required by § 88.87(a). Frequency coordination is necessary, however, when there is a change in authorized stations pursuant to § 88.87(b).

INTERSERVICE USE

§ 88.309 Interservice use of frequencies in the 150-174, 421-430, and 450-470 MHz bands.

Frequencies listed as available for eligibles in the Non-Commercial Radio Service are available for inter-category sharing by SMRs under the following conditions:

(a) There are **no SMR or General Pool frequencies** available in that same frequency band, and

(b) the channels are reassigned from a **bona fide** Non-Commercial or Public Safety eligible licensed and **operating for at least five years** on that channel, and

(c) for Non-Commercial and Public Safety systems licensed before [Date of the Report and Order], the new and old licensee must certify that the **system manager has not been provided financial compensation** resulting from the sale of the system. Provision of any compensation to the system manager resulting from the sale of the system will result in automatic cancellation of the license.

§ 88.313 Interservice use of frequencies in the 806-821/851-866 MHz and 896-901/935-940 MHz bands.

Frequencies listed as available for eligibles in the Public Safety Radio, Non-Commercial Radio and SMR Services are available for inter-category sharing in the 806-821/851-866 MHz band and in the Public Safety and Non-Commercial Radio Services in the 896-901/935-940 MHz band under the following conditions:

(a) Any channel in the 806-821/851-866 MHz and 896-901/935-940 MHz bands will be available to eligible applicants in the **Public Safety and Non-Commercial Radio Services** if there are no frequencies in that band in their own category and no public safety systems are authorized on those channels under consideration to be shared.

(b) Channels in the Non-Commercial Radio Service in the 806-821/851-866 MHz band will be available to **fully-loaded SMR systems** if no 806-821/851-866 MHz SMRS category frequencies are available. Evidence must be provided that the SMR applicant has sufficient users to warrant the authorization of additional channels. If channels are available, the SMR licensee will be authorized no more than one channel more than its current loading warrants.

(c) Channels in the 851-854.750 MHz band are available to **fully-loaded trunked systems** for expansion subject to the conditions at § 88.737.

(d) If, as a result of the **addition of General Category channels**, an applicant obtains the maximum number of channels possible (one channel more than current loading warrants), and if the applicant is on the SMR waiting

list for the geographic area in which it receives the channels, the applicant forfeits its position on the waiting list for that band and market.

(e) Channels in the SMR Service category will be available to **fully-loaded Non-Commercial systems** if frequencies in that band in their own categories are not available. Evidence must be provided that the applicant has sufficient users to warrant the authorization of additional channels. See § 88.91. If available, the licensee will be authorized no more than one channel more than its current loading warrants.

(f) The applicant must submit a statement from its own category coordinator that frequencies are not available in that category, and **coordination** is required from the applicable out-of-category coordinator.

(g) The out-of-category licensee must operate by the **rules applicable** to the category to which the frequency is allocated.

(h) The frequencies 861.0125-861.2375, 862.0125-862.2375, 863.0125-863.2375, 864.0125-864.2375, 865.0125-865.2375 MHz are available on a co-primary basis to stations in **Basic Exchange Telephone Radio Service** as described in Part 22 of the Commission's Rules.

MISCELLANEOUS

§ 88.317 Protection of certain radio receiving locations.

(a) Any applicant for a new permanent base or fixed station, or for a modification of an existing authorization that would change the frequency, power, antenna height, directivity, or location within the boundaries described in subparagraph (5) of this section must notify the Director, **National Radio Astronomy Observatory**, P.O. Box 2, Green Bank, W. Va. 24944, in writing, of the technical parameters of the proposal.

(1) The notification must be made prior to, or simultaneously with, the filing of the application with the Commission.

(2) The notification must state the geographical coordinates of the antenna, antenna height, antenna directivity, proposed frequency, type of emission, and effective radiated power.

(3) After receipt of such applications, the Commission will allow a period of 20 days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the 20-day period from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the Commission will consider all aspects of the problem and take whatever action is deemed appropriate.

(4) The provisions of this paragraph do not apply to applications for mobile, temporary base, or temporary fixed stations.

(5) The area of concern for the National Radio Astronomy Observatory or the Naval Radio Research Observatory is the area bounded by 39°15′ N. on the north, 78°30′ W. on the east, 37°30′ N. on the south, and 80°30′ W. on the west.

(b) **Protection for Table Mountain Radio Receiving Zone, Boulder County, Colorado.** Applicants for a station authorization to operate in the vicinity of Boulder County, Colorado under this part are advised to give due consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. These are the research laboratories of the Department of Commerce, Boulder County, Colorado. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 1800 acre site (in the vicinity of coordinates 40°07′50" N. Latitude, 105°14′40" W. Longitude, resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the following values:

Table B-5

Frequency range	Field strength (millivolt per meter) in authorized bandwidth of service	Power flux density<1> (dBW per square meter) in authorized bandwidth of service
Below 540 kHz	10	65.8
540 to 1600 kHz	20	59.8
1.6 to 470 MHz	10	65.8
470 to 890 MHz	30	56.2
Above 890 MHz	1	85.8

<1>Equivalent values of power flux density are calculated assuming a free space characteristic impedance of 377 ohms.

(1) Advance consultation is recommended particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figures in the above table would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether coordination is recommended:

(i) All stations within 2.4 km (1.5 mi);

(ii) Stations within 4.8 km (3 mi) with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 16 km (10 mi) with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of the Table Mountain Receiving Zone;

(iv) Stations within 80 km (50 mi) with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone.

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA R/E5X2, Boulder Laboratories, Boulder, Colorado 80303; telephone (303) 497-6548, in advance of filing their applications with the Commission.

(3) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Department of Commerce or proceedings to modify any authorization that may be granted that, in fact, delivers a signal at the site in excess of the field strength specified herein.

(c) **Protection for Federal Communications Commission monitoring stations**:

(1) Applicants in the vicinity of an FCC monitoring station for a radio station authorization to operate new transmitting facilities or changed transmitting facilities that would increase the field strength produced over the monitoring station over that previously authorized are advised to give consideration, prior to filing applications, to the possible need to protect the FCC stations from harmful interference. Geographical coordinates of the facilities that require protection are listed in § 0.121(b) of the Commission's Rules. Applications for stations (except mobile stations) that will produce on any frequency a direct wave fundamental field strength of greater than 10 mV/m in the authorized bandwidth of service (-65.8 dBW/m^2 power flux density assuming a free space characteristic impedance of 120 times pi, or 377, ohms at the referenced coordinates, may be examined to determine the extent of possible interference. Depending on the theoretical field strength value and existing root-sum-square or other ambient radio field signal levels at the indicated coordinates, a clause protecting the monitoring station may be added to the station authorization.

(2) In the event that the calculated value of the expected field strength exceeds 10 mV/m (-65.8 dBW/m^2) at the reference coordinates, or if there is any question whether field strength levels might exceed the threshold value, advance consultation with the FCC to discuss any protection necessary should be considered. Prospective applicants may communicate with: Chief, Field Operations Bureau, Federal Communications Commission, Washington, D.C. 20554, Telephone (202) 632-6980.

(3) Advance consultation is suggested particularly for those applicants who have no reliable data that indicates whether the field strength or power flux density figure indicated would be exceeded by their proposed radio facilities

(except mobile stations). In such instances, the following is a suggested guide for determining whether an applicant should coordinate:

(i) All stations within 2.4 km (1.5 mi);

(ii) Stations within 4.8 km (3 mi) with 50 watts or more average effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Monitoring Stations;

(iii) Stations within 16 km (10 mi) with 1 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station;

(iv) Stations within 80 km (50 mi) with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

(4) Advance coordination for stations operating above 1000 MHz is recommended only where the proposed station is in the vicinity of a monitoring station designated as a satellite monitoring facility in Section 0.121(b) of this chapter and also meets the criteria outlined in paragraphs (2) and (3) of this section.

(5) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Federal Communications Commission or modification of any authorization that will cause harmful interference.

§ 88.321 Shared use of radio stations.

Licensees of radio stations authorized under this rule part may share the use of their facilities. A station is shared when persons not licensed for the station use the facilities for their own purposes pursuant to the licensee's authorization. Shared use of a radio station may be either on a private carrier basis or by selling of excess capacity. See §§ 88.17 or 88.15(c).

(a) Shared use is **permitted** only by SMR licensees, and by Non-Commercial licensees selling excess capacity (see § 88.15(c)), and may be on a for-profit basis.

(b) **Responsibility**. The licensee of the shared radio station is responsible for assuring that the authorized facility is used only by persons and only for purposes consistent with the requirements of this rule part. The licensee of the shared radio station is responsible for exercising effective operational control over all mobile stations that communicate with the base station.

(c) **Interconnection**. When stations subject to this part are shared, arrangements for interconnection with the PSTN must be made with a duly authorized carrier on a non-profit cost sharing basis. When the interconnection costs are shared, cost sharing records must be maintained and the costs must be distributed at least once a year. A report of the cost

distribution must be placed in the licensee's station records and made available to participants in the sharing and the Commission upon request.

(d) **End user licensing**. End users of shared systems that have control stations that require FAA clearance, (see §§ 17.7 - 17.17 of this chapter), or that may have a significant environmental effect, as defined by § 1.1307 of this chapter, or that are located in a "quiet zone", as defined by § 88.317, must be individually licensed for such control stations prior to construction or operation. All other end users' operations may be conducted under the authority of the base station licensee. All end users, however, continue to be responsible to comply with our Rules. An end user that operates on more than one system will be deemed, when communicating with the other system, to be temporarily under the authority of the system on which it is operating and, for that period, the licensee of the other system must responsibility for proper operation of the end user's mobile station(s).

Subpart C - Technical Standards and General Operating Requirements

§ 88.401 Scope.

This subpart sets forth technical standards for equipment and general operating requirements for stations authorized in the frequency bands governed by this part. Technical standards include provisions for equipment type acceptance, emission classifications, bandwidth limitations, modulation requirements, emission masks, power limitations, frequency stability and spectrum efficiency standards. General operating requirements include operating modes, types of communications, and licensee responsibilities.

TECHNICAL STANDARDS

§ 88.405 Type acceptance.

(a) Except as specified in paragraph (b), each transmitter utilized for operation under this part and each transmitter marketed as set forth in Subparts I and J of Part 2 of the Commission's Rules must be of a type that is included in the Commission's current Radio Equipment List as **type accepted for use under this part**.

(b) **Exceptions**. Type acceptance for equipment utilized under this part is not required for transmitters used in developmental operations pursuant to § 88.1401 or for transmitters operating in the 1427-1435 MHz band.

(c) **Restrictions on equipment's external controls**. Except as provided in paragraph (d) of this section, transmitters designed to operate above 25 MHz will not be type accepted for use under this part if the operator can program and transmit on frequencies, other than those programmed by the manufacturer, service or maintenance personnel, using the equipment's external operation controls.

(d) Transmitters having frequency programming capability and that are designed to operate above 25 MHz are **exempt from paragraph (c)** of this section if the design of such transmitters:

(1) Is such that transmitters with external controls normally available to the operator must be internally modified to place the equipment in the programmable mode. Further, while in the programmable mode, the equipment must not be capable of transmitting. The procedures for making the modification and altering the frequency program must not be made available with the operating information normally supplied to the end user of the equipment; or

(2) Requires the transmitter to be programmed for frequencies through controls normally inaccessible to the operator; or

(3) Requires equipment to be programmed for frequencies through use of external devices or specifically programmed modules made available only to service/maintenance personnel; or

(4) Requires equipment to be programmed through cloning (copying a program directly from another transmitter) using devices and procedures made available only to service/maintenance personnel.

(e) The requirements of paragraphs (c) and (d) of this section **will not apply** if the equipment has been designed and manufactured specifically for **aircraft use**.

(f) Equipment marketed for public safety operation in the 821-824/866-869 MHz bands must have the capability to be programmed for operation on the **mutual aid channels** as designated in § 88.883.

§ 88.409 Emission classifications.

(a) Unless specified elsewhere in this part, stations will be authorized emissions as provided for in the following paragraphs.

(b) **Explanation of emission symbols.**

The first symbol indicates the type of modulation on the transmitter carrier.

A - Amplitude modulation, double sideband with identical information on each sideband.
F - Frequency modulation.
G - Phase modulation.
J - Single sideband with suppressed carrier.
P - Unmodulated pulse.

The second symbol indicates the type of signal modulating the transmitter carrier.

0 - No modulation.
1 - Digital modulation, no subcarrier.
2 - Digital modulation, modulated subcarrier.
3 - Analog modulation.

The third symbol indicates the type of transmitted information.

A - Telegraphy for aural reception.
B - Telegraphy for machine reception.
C - Facsimilie
D - Data, telemetry, and telecommand.
E - Voice.
N - No transmitted information.

(c) **Voice operations below 25 MHz.** Stations will normally be authorized J3E emission for voice operations. Travelers Information Stations operating pursuant to § 88.1093 will be authorized A3E emission.

(d) **Voice operations above 25 MHz**. Stations will normally be authorized F3E or G3E emission. Stations utilizing digital voice modulation, will be authorized F1E, G1E, F2E or G2E emission. Authorization includes the use of non-voice emissions for tone signaling devices whose sole functions are to establish and to maintain communications, to provide automatic station identification and, for operations in the Public Safety Radio Service, to activate emergency warning devices used solely for advising the general public or emergency personnel of an impending emergency.

(e) **Non-voice operations**. A1A, A1B, A1D, A2B, A2D, A3C, A3D, F1B, F1D, F2B, F2D, F3D, G1B, G1D, G2B, G2D, G3D, and J2B emissions will be authorized.

(f) **Other emissions**. Requests for emissions other than those listed in paragraphs (c) through (e)of this section will be considered on a case-by-case basis to insure that the new emissions would cause no more interference than other emissions that are currently permitted.

§ 88.413 Bandwidth limitations.

(a) Each authorization issued to a station licensed under this part will show an **emission designator** representing the class of emission authorized. The designator will be prefixed by the specified necessary bandwidth. This figure does not necessarily indicate the bandwidth occupied by the emission at any instant. In those cases where Part 2 of this chapter does not provide a formula for the computation of necessary bandwidth, the occupied bandwidth as defined in Part 2 may be used in lieu of the necessary bandwidth. The maximum authorized bandwidth contains those frequencies upon which 99 percent of the radiated power appears, extended to include any discrete frequency upon which the power is at least 0.25 percent of the total radiated power.

(b) The maximum authorized **single channel bandwidth of emission** corresponding to the type of emission specified in § 88.409 of this part will be as follows:

(1) For A1A or A1B emissions, the maximum authorized bandwidth is 0.25 kHz. The maximum authorized bandwidth for type A3E emission will be 8 kHz.

(2) For operations below 25 MHz utilizing J3E emission, the bandwidth occupied by the emission may not exceed 3000 Hz. The assigned frequency will be specified in the authorization. The authorized carrier frequency will be 1400 Hz lower in frequency than the assigned frequency. Only upper sideband emission may be used. In the case of regularly available double sideband radiotelephone channels, an assigned frequency for J3E emissions is available either 1600 Hz below or 1400 Hz above the double sideband radiotelephone assigned frequency.

(3) Generally, for all other types of emissions, the maximum authorized bandwidth will not be more than that normally authorized for voice operations.

(4) Where a frequency is assigned exclusively to a single licensee, more than a single emission may be utilized within the authorized bandwidth. In such cases, the frequency stability requirements of § 88.425 do not apply, but out-of-band emission limits of § 88.421 must be met.

(5) Contiguous channels (non-standard bandwidths) may be authorized for systems requiring more than the normal single channel bandwidth provided the system meets the spectrum efficiency standard in § 88.433. If necessary, licensees may, with license mofification, trade channels among themselves in order to obtain contiguous frequencies.

(6) Unless specified elsewhere, channel spacings and bandwidths that will be authorized in the following frequency bands are given in Table C-1.

Table C-1 Standard Channel Spacing/Bandwidth

Frequency band MHz	Channel spacing (kHz) [2]	Authorized bandwidth (kHz) [1]	[2]
Below 25	---	---	---
25-50	20	20	20
72-76 Fixed	20	20	20
72-76 Mobile	5	10	4
150-174	5	12	4
216-220	---	---	---
220-222	5	4	4
420-512 [3]	6.25	10	5
806-821	25	20	20
821-824	12.5	20	20
851-866	25	20	20
866-869	12.5	20	20
896-901	12.5	13.6	13.6
929-930	25	20	20
935-940	12.5	13.6	13.6
1427-1435	---	---	---
2450-2483.5	---	---	---
Above 2500	---	---	---

[1] Stations authorized prior to (eff date of rules) must meet this bandwidth requirement by January 1, 1996 and, where applicable, must reduce bandwidth by the appropriate date listed in § 88.433(d) to conform with stations authorized pursuant to Note 2.

[2] For stations authorized after xxxx (eff date of rules).

[3] Bandwidths for radiolocation systems in the 420-450 MHz band will be reviewed and authorized on a case-by-case basis.

§ 88.417 Modulation requirements.

Each transmitter must meet the requirements provided in paragraphs (a) or (b) of this section. The requirements of this paragraph do not apply to

mobile stations that are authorized to operate with a maximum power output of 2 watts or less.

(a) Transmitters utilizing **analog emissions** must be equipped with an audio low-pass filter whose characteristics will enable the transmitter to meet the emission limitations specified in § 88.421 under all conditions of operation..

(b) Transmitters utilizing **digital emissions** are exempt from the audio low-pass filter requirement provided that such transmitters must be tested for type acceptance using the digital modulating signal or signals specified by the manufacturer. The type acceptance application must contain such information as may be necessary to demonstrate that the transmitter complies with the emission limitations specified in § 88.421.

§ 88.421 Emission masks.

Except as indicated elsewhere in this part, transmitters used in the Private Land Mobile Radio Services must comply with the emission masks outlined in this section. The measurements of emission power can be expressed in peak or average values provided they are expressed in the same parameters as the unmodulated transmitter carrier power. For transmitters that do not produce a full power unmodulated carrier, the reference to the unmodulated transmitter carrier power refers to the total power.

(a) **Below 25 MHz**. Transmitters utilizing emissions other than single sideband (J3E) must meet the emission requirements of paragraph (b)(1) of this section. For transmitters utilizing J3E emission, the carrier must be at least 40 dB below the peak envelope power and the power of emissions must be reduced below the output power (P in watts) of the transmitter as follows:

(1) On any frequency removed from the assigned frequency by more than 50 percent, but not more than 150 percent of the authorized bandwidth: At least 25 decibels (dB);

(2) On any frequency removed from the assigned frequency by more than 150 percent, but not more than 250 percent of the authorized bandwidth: At least 35 dB;

(3) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least 43 + 10 log P dB.

(b) **25-50 MHz, 72-76 MHz, and above 800 MHz**.

(1) For transmitters operating in the 25-50 MHz frequency band, on frequencies listed at § 88.1189 for fixed use in the 72-76 MHz band that are equipped with an audio low-pass filter pursuant to § 88.417(a), in the 800 and 900 MHz bands referenced in paragraphs (e)(1) and (f)(1) of this section, and on frequencies above 940 MHz, the power of any emission must be below the unmodulated carrier power (P) as follows:

(i) On any frequency removed from the assigned frequency by more than 50 percent, but not more than 100 percent of the authorized bandwidth: At least 25 dB.

(ii) On any frequency removed from the assigned frequency by more than 100 percent, but not more than 250 percent of the authorized bandwidth: At least 35 dB.

(iii) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least 43 + 10 log P dB or 80 dB, whichever is the lesser attenuation.

(2) For transmitters not equipped with an audio low-pass filter pursuant to § 88.421(b), the power of any emission must be attenuated below the unmodulated carrier output power (P) as follows:

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 5 kHz, but not more than 10 kHz: At least 83 log (f_d/5) dB;

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 10 kHz, but not more than 250 percent of the authorized bandwidth: At least 29 log (f_d^2/11) dB or 50 dB, whichever is the lesser attenuation;

(iii) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: At least 43 + 10 log (P) dB or 80 dB, whichever is the lesser attenuation.

(c) **72-76 MHz (mobile use), 150-174 MHz, 216-222 MHz.** For transmitters operating in the 150-174 MHz or 216-222 MHz frequency bands, or on frequencies listed at § 88.905(d) for low power mobile operation in the 72-76 MHz frequency band, any emission must be reduced below the power of the highest emission contained within the authorized channel bandwidth as follows:

(1) On any frequency within the authorized bandwidth to the edge of the authorized bandwidth (f_e): Zero dB.

(2) On any frequency removed from the edge of the authorized bandwidth, (f_e), to (f_e) + 1.75 kHz: 30 + 20x(f_e) dB, or 55 + 10 log (P), or 65 dB, whichever is the lesser attenuation.

(3) On any frequency beyond 1.75 kHz removed from the edge of the authorized bandwidth (f_e): At least 55 + 10 log (P) dB.

(d) **420-512 MHz.** For transmitters operating in the 420-512 MHz frequency band, any emission must be attenuated below the power (P) of the highest emission contained within the authorized channel bandwidth as follows:

(1) On any frequency within the authorized bandwidth to the edge of the authorized bandwidth (f_e): Zero dB.

(2) On any frequency removed from the edge of the authorized bandwidth, (f_e), to (f_e) + 2.1 kHz: 30 + 16.7x(f_e) dB, or 55 + 10 log (P), or 65 dB, whichever is the lesser attenuation.

(3) On any frequency beyond 2.1 kHz removed from the edge of the authorized bandwidth (f_e): At least 55 + 10 log (P) dB.

(e) **806-821/851-866 MHz, 929-930 MHz.**

(1) Transmitters operating in the 806-821/851-866 MHz or 929-930 MHz bands that are **equipped** with an audio low-pass filter pursuant to § 88.417(a) must meet the emission limitations of paragraph (b)(1) of this section.

(2) For transmitters that operate in the 806-821 MHz/851-866 MHz or 929-930 MHz frequency bands and that are **not equipped** with an audio low-pass filter pursuant to § 88.417(b), the power of any emission must be attenuated below the unmodulated carrier power (P) as follows:

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 5 kHz, but no more than 10 kHz: At least 83 log (f_d/5) dB;

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 10 kHz, but no more than 250 percent of the authorized bandwidth: At least 116 log (f_d/6.1) dB, or 50 + 10 log (P) dB, or 70 dB, whichever is the lesser attenuation;

(iii) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: At least 43 + 10 log (P) dB, or 80 dB, whichever is the lesser attenuation.

(f) **821-824/866-869 MHz.**

(1) Transmitters operating in the 821-824/866-869 MHz frequency bands that are **equipped** with an audio low-pass filter pursuant to § 88.417(a) must meet the emission limitations of paragraph (b)(1) of this section.

(2) For transmitters that operate in the 821-824/866-869 MHz frequency bands that are **not equipped** with an audio low-pass filter pursuant to § 88.417(b), the power of any emission must be attenuated below the unmodulated carrier power (P) as follows:

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in kHz) of 4 kHz or less: Zero dB.

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in kHz) of more than 4 kHz, but no more than 8.5 kHz: At least 107 log (f_d/4) dB;

(iii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in kHz) of more than 8.5 kHz, but no more than 15 kHz: At least 40.5 log (f_d/1.16) dB;

(iv) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in kHz) of more than 15 kHz, but no more than 25 kHz: At least 116 log (fd/6.1) dB;

(v) On any frequency removed from the center of the authorized bandwidth by more than 25 kHz: At least 43 + log (P) dB, or 80 dB, whichever is the lesser attenuation.

(g) **896-901 MHz/935-940 MHz.**

(1) For transmitters operating in the 896-901 MHz/935-940 MHz frequency bands that are **equipped** with an audio low pass filter pursuant to § 88.417(a), the power of any emission must be attenuated below the unmodulated carrier power of the transmitter (P) as follows:

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 6.8 kHz, but no more than 9.0 kHz: At least 25 dB;

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 9.0 kHz, but no more than 15 kHz: At least 35 dB;

(iii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 15 kHz: At least 43 + 10 log (P) dB, or 70 dB, whichever is the lesser attenuation.

(2) For transmitters that operate in the 896-901 MHz/935-940 MHz frequency bands that are **not equipped** with an audio low-pass filter pursuant to § 88.417(b), the power of any emission must be attenuated below the unmodulated carrier power of the transmitter (P) as follows:

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 2.5 kHz, but no more than 6.25 kHz: At least 53 log (f_d/2.5) dB;

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 6.25 kHz, but no more than 9.5 kHz: At least 103 log (f_d/3.9) dB;

(iii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 9.5 kHz, but no more than 15 kHz: At least 157 log (f_d/5.3) dB;

(iv) On any frequency removed from the center of the authorized bandwidth by a displacement frequency by more than 15 kHz: At least 50 + 10 log (P) dB or 70 dB, whichever is the lesser attenuation.

(h) Below 1000 MHz, the resolution bandwidth of the instrumentation used to measure the emission power must be 100 Hz for measuring emissions up to and including 250 kHz from the edge of the authorized bandwidth, and 10 kHz for measuring emissions more than 250 kHz from the edge of the authorized bandwidth. Above 1000 MHz, the resolution bandwidth of the instrumentation must be 1 MHz. If a video filter is used, its bandwidth must not be less than the resolution bandwidth. The power level of the highest emission within the channel, to which the attenuation is referenced, must be remeasured for each change in resolution bandwidth.

§ 88.425 Frequency stability.

(a) Unless noted elsewhere in this part, transmitters used in the services governed by this part must be maintained within the limits given in Table C-2. Transmitter frequency stability must enable the equipment to meet the emission mask requirements given in § 88.421.

Table C-2 Frequency Stability
parts per million (ppm)

Frequency range (MHz)	Fixed and base stations	Mobile stations	
	200 W or less output power	Over 2 W output power	2 W or less output power
Below 25	100 [1] [2] [3]	100	200
25-50	20	20	50
72-76	5 [4]	---	50
150-220	0.1 [5]	1.5	1.5
220-222	0.1	1.5	1.5
420-512	0.1 [6] [7]	1.0	1.0
806-821	1.5 [8]	2.5	2.5
821-824	10 [8]	1.5	1.5
851-866	1.5	2.5	2.5
866-869	1	1.5	1.5
896-901	0.1 [8]	1.5	1.5
929-930	1.5	---	---
935-940	0.1	1.5	1.5
1427-1435	300 [9]	300	300
Above 2450 [10]	---	---	---

[1] Fixed and base stations with over 200 watts transmitter power must have a frequency stability of 50 ppm, except in the Public Safety Radio Service where the frequency stability is 100 ppm.

[2] For single sideband operations below 25 MHz, the carrier frequency must maintained within 50 Hz of the authorized carrier frequency.

[3] Travelers information station transmitters operating from 530-1700 kHz and transmitters exceeding 200 watts peak envelope power used for disaster communications and long distance circuit operations pursuant to §§ 88.1273 and 88.1283 must maintain the carrier frequency to within 20 Hz of the authorized frequency.

[4] Call box stations in the Public Safety Radio Service operating in the 72-76 MHz band may operate with a frequency stability of 50 ppm.

[5] Stations operating in the 154.45 to 154.49 MHz or the 173.2 to 173.4 MHz bands may operate with a frequency stability of 5 ppm.

[6] Operational fixed stations controlling mobile relays, through use of the associated mobile frequency, may operate with a frequency stability of 5 ppm.

[7] Base stations operating on frequencies used for remote control purposes in railroad yard and terminal areas, may operate with a frequency stability of 5 ppm.

[8] Control stations may operate with the frequency stability specified for associated mobile stations.

[9] Fixed stations with output powers above 120 watts and necessary bandwidth less than 3 kHz must operate with a frequency stability of 100 ppm. Fixed stations with output powers less than 120 watts and using time-division multiplex, may operate with a frequency stability of 500 ppm.

[10] Frequency stability to be specified in the station authorization.

(b) For the purpose of determining the frequency stability limits, the power of a transmitter is considered to be the **maximum rated output power** as specified by the manufacturer.

(c) The frequency stability requirement will apply 20 milliseconds after the initial power transmission from the transmitter that is 20 dB below the final output power.

§ 88.429 Power and antenna height limits.

Applications for authorizations must request no more power than the actual power necessary for satisfactory operation. Except where otherwise specifically provided, the maximum power that will be authorized is as follows:

(a) **Below 25 MHz**. For single sideband operations (J3E emission), the maximum transmitter peak envelope power is 1000 watts.

(b) **25-50 MHz**. The maximum transmitter output power is 300 watts.

(c) **72-76 MHz**. The maximum effective radiated power for stations operating on fixed frequencies is 300 watts. Stations operating on mobile-only frequencies are limited to one watt transmitter output power.

(d) **150-216 MHz**. The maximum authorized effective radiated power (ERP) with respect to antenna heights will be in accordance with Table C-3.

Table C-3 150-216 MHz ERP/Antenna Height	
Antenna height above average terrain (HAAT) meters (feet)	Effective radiated power (ERP) (watts)
Up to 60 (197)	300
60-75 (197-246)	190
75-90 (246-295)	120
90-120 (295-394)	75
120-180 (394-590)	30
Above 180 (590)	5

(e) **216-220 MHz**. Requested transmitter power will be considered and authorized on a case-by-case basis.

(f) **220-222 MHz**. The permissible ERP with respect to antenna heights will be authorized in accordance with Table C-4. These are maximum values and applicants are required to justify power levels requested. In this band, Channels 196-200 are limited to 2 watts ERP and a maximum antenna height of 6.1 m (20 ft) above ground. The maximum permissible ERP for mobile units is 50 watts. Portable units are considered as mobile units.

Table C-4 220-222 MHz ERP/Antenna Height	
Antenna height above average terrain (HAAT) meters (feet)	Effective radiated power (watts) [1]
Up to 150 (492)	500
150-225 (492-738)	250
225-300 (738-984)	125
300-450 (984-1476)	60
450-600 (1476-1968)	30
600-750 (1968-2460)	20
750-900 (2460-2952)	15
900-1050 (2952-3444)	10
Above 1050 (3444)	5
[1] Transmitter PEP will be used to determine ERP.	

(g) **421-430 MHz**. Base station authorizations in the 421-430 MHz band will be subject to effective radiated power (ERP) and effective antenna height (EAH) limitations as shown in the Table below. ERP is defined as the product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction. EAH is calculated by subtracting the assumed

average terrain elevation (AATE) as listed in Table D-6 of § 88.817, from the antenna height above mean sea level. Control stations are limited to 20 watts transmitter output power.

Table C-5 421-430 MHz ERP/Antenna Height

Effective antenna height (EAH) meters (feet)	Effective radiated power (watts)
Up to 150 (492)	250
150-300 (492-984)	150
300-450 (984-1476)	75
450-600 (1476-1968)	40
600-750 (1968-2460)	20
750-900 (2460-2952)	15
900-1200 (2952-3936)	10
Above 1200 (3936)	5

(h) **450-470 MHz**. Power limits in this frequency band are the same as for the 150-216 MHz band as specified in paragraph (d) of this section.

(i) **470-512 MHz**.

(1) The tables in this paragraph must be used to determine the effective radiated power (ERP) with respect to the height above average terrain (HAAT) of the proposed land mobile base station and the (ERP) for the associated control station. Control station antenna height must not exceed 31 m (100 ft) HAAT.

(i) Base stations operating on the frequencies available for land mobile use in any listed urbanized area and having an HAAT less than 152 m (500 ft) will protect co-channel and adjacent channel television stations in accordance with in Tables C-6 and C-10 of this paragraph except for Channel 15 in New York and Cleveland and Channel 16 in Detroit, where protection will be in accordance with Tables C-7 and C-10.

(ii) For base stations having antenna heights between 152-914 m (500-3000 ft) HAAT, the ERP must be reduced below 1 kilowatt in accordance with Table C-10 except for Channel 15 in New York and Cleveland and Channel 16 in Detroit, where the ERP must be reduced in accordance with Table C-12. For heights of more than 152 m (500 ft) HAAT, the distance to the radio path horizon will be calculated assuming smooth earth. If the distance so determined equals or exceeds the distance to the Grade B contour of a co-channel TV station as defined in § 73.683(a), an authorization will not be granted unless it can be shown that actual terrain considerations provide the desired protection at the Grade B contour, or that the effective radiated power will be further reduced so that, assuming free space attenuation, the desired protection at the Grade B contour will be achieved.

(iii) Mobile units and control stations operating on the frequencies available for land mobile use in any given urbanized area must protect co-channel and adjacent channel television stations in accordance with the values set forth in Table C-8 and paragraph (i)(iv) of this section except for Channel 15 in New York and Cleveland, and channel 16 in Detroit, where protection will be in accordance with Table C-9 and paragraph (i)(iv) of this section.

(iv) The minimum distance between a land mobile base station that has associated mobile units and a protected adjacent channel television station is 145 km (90 miles).

(v) The television stations to be protected (co-channel, adjacent channel, IM, and IF) in any given urbanized area, in accordance with the provisions of paragraphs (i)(i), (i)(ii), (i)(iii), and (i)(iv) of this section, are identified in the Commission's publication "TV stations to be considered in the preparation of Applications for Land Mobile Facilities in the Band 470-512 MHz." The publication is available from the Federal Communications Commission, Gettysburg, PA 17325.

(2) Average elevation of the terrain.

(i) In determining the average elevation of the terrain, the elevations between 3 km and 16 km (2 to 10 miles) from the antenna site are employed. Profile graphs must be drawn for a minimum of eight radials beginning at the antenna site and extending 16 km (10 miles). The radials should be drawn starting with true north. At least one radial should be constructed in the direction of the nearest co-channel and adjacent channel UHF television stations. The profile graph for each radial must be plotted by contour intervals of from 12 m to 30 m (40 ft to 100 ft) and, where the data permits, at least 50 points of elevation (generally uniformly spaced) should be used for each radial. For very rugged terrain 61 m to 122 m (200 ft to 400 ft) contour intervals may be used. Where the terrain is uniform or gently sloping, the smallest contour interval indicated on the topographic chart may be used. The average elevation of the 13 km (8 mi) distance between 3 km and 16 km (2 to 10 mi) from the antenna site should be determined from the profile graph for each radial. This may be obtained by averaging a large number of equally spaced points, by using a planimeter, or by obtaining the median elevation (that exceeded by 50 percent of the distance) in sectors and averaging those values. In the preparation of the profile graphs, the elevation or contour intervals may be taken from U.S. Geological Survey Topographic Maps, U.S. Army Corps of Engineers Maps, or Tennessee Valley Authority Maps. Maps with a scale of 1:250,000 or larger (such as 1:24,000) must be used. Digital Terrain Data Tapes, provided by the National Cartographic Institute, U.S. Geological Survey, may be utilized in lieu of maps, but the number of data points must be equal to or exceed that specified above. If such maps are not published for the area in question, the next best topographic information should be used.

(ii) Applicants for base stations in the Miami urbanized area may, in lieu of calculating the height of average terrain, use 3 m (10 ft) as the average terrain height.

Table C-6 Maximum Base Station ERP (watts) for Co-channel Frequencies (50 dB Protection)

Distance in km (mi) [1]	Antenna height (HAAT) in meters (feet)									
	15 (50)	30 (100)	45 (150)	61 (200)	76 (250)	91 (300)	106 (350)	122 (400)	137 (450)	152 (500)
260 (162)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
257 (160)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	800
249 (155)	1,000	1,000	1,000	1,000	1,000	875	775	700	625	575
241 (150)	1,000	1,000	950	775	725	625	550	500	450	400
233 (145)	850	750	650	575	500	440	400	350	320	300
225 (140)	600	575	475	400	350	300	275	250	230	225
217 (135)	450	400	335	300	255	240	200	185	165	150
209 (130)	350	300	245	200	185	160	145	125	120	100
201 (125)	225	200	170	150	125	110	100	90	80	75
193 (120)	175	150	125	105	90	80	70	60	55	50

[1] Distance from transmitter site of protected UHF television station.

Table C-7 Maximum Base Station ERP (watts) for Co-channel Frequencies (40 dB Protection)

Distance in km (mi) [1]	Antenna height (HAAT) in meters (feet)									
	15 (50)	30 (100)	45 (150)	61 (200)	76 (250)	91 (300)	106 (350)	122 (400)	137 (450)	152 (500)
209 (130)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
201 (125)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	850	750	725
193 (120)	1,000	1,000	1,000	1,000	900	750	675	600	550	500
185 (115)	1,000	1,000	800	725	600	525	475	425	375	350
177 (110)	850	700	600	500	425	375	325	300	275	225
169 (105)	600	475	400	325	275	250	225	200	175	150
161 (100)	400	325	275	225	175	150	140	125	110	100
153 (95)	275	225	175	125	110	95	80	70	60	50
145 (90)	175	125	100	75	50	--	--	--	--	--

[1] Distance from transmitter site of protected UHF television station.

Table C-8 Mobile and Control Stations - Distance Between Associated Base Stations and Protected Co-channel TV Station [50 dB protection]

ERP of mobile unit and control station (watts)	Distance Kilometers (mi)
200	249 (155)
150	243 (151)
100	233 (145)
50	217 (135)
25	201 (125)
10	188 (117)
5	180 (112)

Table C-9 Mobile and Control Stations - Distance Between Associated Base Station and Protected Co-channel TV Station [40 dB protection]

ERP of mobile unit and control station (watts)	Distance Kilometers (mi)
200	209 (130)
150	201 (125)
100	193 (120)
50	185 (115)
25	177 (110)
10	169 (105)
5	161 (100)

Table C-10 Maximum Base Station ERP for Adjacent Channel Frequencies

Distance in km (mi) [1] [2]	Antenna height HAAT in meters (feet)									
	15 (50)	30 (100)	45 (150)	61 (200)	76 (250)	91 (300)	106 (350)	122 (400)	137 (450)	152 (500)
108 (67)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
106 (66)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	750
104 (65)	1,000	1,000	1,000	1,000	1,000	1,000	1,000	825	650	600
103 (64)	1,000	1,000	1,000	1,000	1,000	1,000	775	625	500	400
101 (63)	1,000	1,000	1,000	1,000	1,000	650	450	325	325	225
99 (62)	1,000	1,000	1,000	1,000	525	375	250	200	150	125
98 (61)	1,000	1,000	700	450	250	200	125	100	75	50
96 (60)	1,000	1,000	425	225	125	100	75	50	--	--

[1] Distance from transmitter site of protected UHF television station.

[2] The minimum distance is 90 miles (145 km) where there are mobile units associated with the base station. See § 88.429(i)(1)(iv).

Table C-11 Maximum Base Station ERP (watts) with HAAT more than 152 meters [50 dB Protection]

Distance in km (mi) [1] [2]	Antenna height (HAAT) in meters (feet) [2]					
	152 (500)	305 (1000)	457 (1500)	610 (2000)	762 (2500)	914 (3000)
261 (162)	1000	501	282	170	110	71
241 (150)	400	209	110	60	36	23
225 (140)	225	102	50	28	16	10
209 (130)	100	48	21	11	7	5
193 (120)	50	19	9	5	3	2

[1] Distance from transmitter site of protected UHF television station.

[2] For intermediate values of height and/or distance, use linear interpolation to obtain the maximum permitted ERP.

Table C-12 Maximum Base Station ERP (watts) with HAAT more than 152 meters (40 dB Protection)

Distance in km (mi) [1] [2]	Antenna height (HAAT) in meters (feet) [2]					
	152 (500)	305 (1000)	457 (1500)	610 (2000)	762 (2500)	914 (3000)
209 (130)	1000	447	219	117	71	46
193 (120)	500	209	95	50	30	19
177 (110)	225	91	35	19	11	8
161 (100)	100	30	10	5	3	2
153 (95)	50	13	5	3	2	1

[1] Distance from transmitter site of protected UHF television station.

[2] For intermediate values of height and/or distance, use linear interpolation to obtain the maximum permitted ERP.

(j) **806-824 MHz/851-869 MHz and 896-901/935-940 MHz.**

(1) Systems to be located within 24 km (15 mi) of the geographic center of the 50 urbanized areas listed below will be considered "urban" systems (Except where included below, see § 88.1601 for geographic centers). All others will be considered "suburban" systems.

Akron, OH, Albany, NY, Atlanta, GA, Baltimore, MD, Birmingham, AL, Boston, MA, Buffalo, NY, Chicago, IL, Cincinnati, OH, Cleveland, OH, Columbus, OH, Dallas, TX, Dayton, OH, Denver, CO, Detroit, MI, Fort Lauderdale, FL (26°07'30", 80°09'00"), Fort Worth, TX (32°44'55", 97°19'44"), Houston, TX, Indianapolis, IN, Jacksonville, FL, Kansas City, MO, Los Angeles, CA, Louisville, KY, Miami, FL, Memphis, TN, Milwaukee, WI, Minneapolis, MN, New Orleans, LA, New York, NY, Norfolk, VA, Oklahoma City, OK, Omaha, NE, Philadelphia, PA, Phoenix, AZ, Pittsburgh, PA, Portland, OR, Providence, RI, Rochester, NY, Sacramento, CA, St. Louis, MO, St. Petersburg, FL (27°46'18", 82°38'19"), San Antonio, TX, San Bernardino, CA (34°06'30", 117°17'28"), San Diego, CA, San Francisco, CA, San Jose, CA (37°20'16", 121°53'24"), Seattle, WA, Springfield, MA, Toledo, OH, Washington, DC

(2) The effective radiated power and antenna height for base stations used in suburban-conventional systems of communications may not exceed 500 watts (27 dBw) and 152 m (500 ft) above average terrain (AAT) respectively, or the equivalent as determined from Table C-13. These are maximum values, and applicants are required to justify power levels and antenna heights requested. For service area requirements less than 32 km (20 mi) in radius, see Table C-14.

(3) The effective radiated power and antenna height for base stations used in trunked and urban-conventional systems may not exceed 1 kilowatt (30 dBw) and 304 m (1000 ft) above average terrain (AAT), respectively, or the

equivalent thereof as determined from Table C-13. These are maximum values, and applicants will be required to justify power levels and antenna heights requested. For service area requirements less than 32 km (20 mi) in radius, see Table C-15.

(4) The maximum transmitter output power for mobile stations is 100 watts.

Table C-13 Equivalent Power and Antenna Heights for Base Stations in the 851-869 MHz and 935-940 MHz Bands which have a Requirement for a 32 km (20 mi) Service Area Radius

Antenna height (HAAT) in meters (feet)	ERP (watts) [1] [2] Urban/trunked	Suburban
Over 1524 (5000)	65	15
1372-1524 (4501-5000)	65	15
1220-1371 (4001-4500)	70	29
1067-1219 (3501-4000)	75	25
915-1066 (3001-3500)	100	30
763-914 (2501-3000)	140	35
610-762 (2001-2500)	200	50
458-609 (1501-2000)	350	80
305-457 (1001-1500)	600	160
153-304 (501-1000)	1000	220
Up to 152 (500)	1000	500

[1] Applicants in the Los Angeles area who demonstrate a need to serve both downtown and fringe areas will be permitted to utilize an ERP of 1 kw at the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, and Mount Wilson.

[2] Licensees in San Diego will be permitted to utilize an ERP of 500 watts at the following mountaintop sites: Palomar, Otay, Woodson, and Miguel.

Table C-14 Equivalent Power and Antenna Heights for Suburban-Conventional Base Stations in the 851-869 MHz and 935-940 MHz Bands which have a requirement for less than a 32 km (20 mi) Service Area Radius

Service area radius in km (mi)	Base station antenna height (HAAT) in meters (feet)					
	122-152 (401-500)	92-122 (301-400)	61-92 (201-300)	31-61 (101-200)	15-31 (51-100)	0-15 (0-50)
32 (20)	500	500	500	500	500	500
30 (19)	400	500	500	500	500	500
29 (18)	310	385	500	500	500	500
27 (17)	235	300	385	500	500	500
26 (16)	175	220	285	440	500	500
24 (15)	130	160	215	330	500	500
22 (14)	95	120	155	240	480	500
21 (13)	70	85	115	175	350	500
19 (12)	50	60	80	125	250	500
18 (11)	35	45	60	90	180	360
16 (10)	25	30	40	60	120	240
14 (9)	15	20	25	40	80	160
13 (8)	10	12	15	25	50	100
11 (7)	6	7	10	15	30	60
10 (6)	3	4	5	7	15	30
8 (5) or less	1	2	3	4	8	16

Table C-15 Equivalent Power and Antenna Heights for Urban-Conventional and Trunked System Base Stations in the 851-869 MHz and 935-940 MHz Bands which have a requirement for less than a 32 km (20 mi) Service Area Radius

Service area radius km (mi)	Base station antenna height (HAAT) in meters (feet)							
	228-305 (751-1000)	152-228 (501-750)	121-152 (401-500)	91-121 (301-400)	60-91 (201-300)	30-60 (101-200)	15-30 (51-100)	0-15 (0-50)
32 (20)	1000	1000	1000	1000	1000	1000	1000	1000
30 (19)	800	1000	1000	1000	1000	1000	1000	1000
29 (18)	640	830	1000	1000	1000	1000	1000	1000
27 (17)	480	625	960	1000	1000	1000	1000	1000
26 (16)	360	470	720	900	1000	1000	1000	1000
24 (15)	270	350	540	675	875	1000	1000	1000
22 (14)	200	260	400	500	650	1000	1000	1000
21 (13)	140	180	280	350	450	700	1000	1000
19 (12)	100	130	200	250	325	500	1000	1000
18 (11)	70	90	140	175	230	350	700	1000
16 (10)	45	60	90	110	145	220	440	1000
14 (9)	30	40	60	75	100	150	300	600
13 (8)	20	25	40	50	65	100	200	400
11 (7)	15	20	30	40	50	80	160	300
10 (6)	8	10	16	20	25	40	80	100
8 (5) or less	5	6	9	12	15	25	50	10

(k) **929-930 MHz**. The maximum effective radiated power (ERP) is 1 kilowatt at an antenna height above average terrain (AAT) of 305 m (1000 ft). For antenna heights above 305 m (1000 ft) AAT, the ERP will be reduced as shown in Table C-16.

Table C-16 . 929-930 MHz ERP/Antenna Height	
Antenna height (HAAT) in meters (feet)	Effective radiated power (ERP) (watts)
Up to 305 (1000)	1000
305-457 (1001-1500)	600
457-610 (1500-2000)	350
610-762 (2000-2500)	200
762-915 (2500-3000)	140
915-1067 (3000-3500)	100
1067-1220 (3500-4000)	75
1220-1372 (4000-4500)	70
1372-1525 (4500-5000)	65
Over 1525 (5000)	65

(o) **1427-1435 MHz.** Requested transmitter power will be considered and authorized on a case-by-case basis.

(m) **2450-2483.5 MHz.** The maximum transmitter output power is 5 watts.

(n) **Above 2500 MHz.** Requested transmitter power will be considered and authorized on a case-by-case basis.

§ 88.433 Spectrum efficiency standards.

(a) Use of **non-standard bandwidths** will be authorized provided that the following minimum spectrum efficiency standards are met. For systems operating in a paired mode, the requirements pertain to the base station frequencies.

25-50 MHz	One communications link per 20 kHz
72-76 MHz	One communications link per 5 kHz
150-174 MHz	One communications link per 5 kHz
220-222 MHz	One communications link per 5 kHz
420-512 MHz	One communications link per 6.25 kHz
806-869 MHz	One communications link per 25 kHz
896-940 MHz	One communications link per 12.5 kHz

(b) A communications link may convey either data or voice. **Data systems** may use fewer than the minimum number of communications links provided that the total through-put rate (information net of system overhead) is at least 4800 baud times the required number of communications links.

(c) **Pertinent requirements.** When non-standard bandwidths are used the frequency stability requirements of § 88.425 do not apply, but the out-of-band emission limits of § 88.421 must be met.

(d) All stations using frequencies between 150-512 MHz must meet the minimum spectrum efficiency standards in paragraph (a) by the following dates:

Market Number in § 88.1601	Date
1-15	January 1, 2004
16-30	January 1, 2005
31-45	January 1, 2006
46-60	January 1, 2007
61-75	January 1, 2008
76-100	January 1, 2010
Outside Top 100 Markets	January 1, 2012

A system is located in a market if it has a base station located within 161 km (100 mi) of the coordinates in § 88.1601. If located within 161 km (100 mi) of more than one market, the earliest market date applies.

OPERATING REQUIREMENTS

§ 88.437 General.

(a) Licensees of radio stations in the private land mobile radio services are **responsible for the proper operation** and use of each transmitter operating by authority of the license. Licensees must exercise direction and control to assure that all authorized facilities are employed only in a permissible manner and only by persons with authority to use and operate such equipment. Except for frequencies used in accordance with § 88.461(a), no person shall enter or program into a transmitter frequencies for which the licensee using the transmitter is not authorized.

(b) Licensees are bound by the provisions of the **Communications Act of 1934**, as amended, and by the rules and regulations of the Commission governing the radio service in which their facilities are licensed. Licensees may not, through written or oral agreements or otherwise, relieve themselves of any duty or obligation imposed upon them, by law, as licensees.

(c) Each licensee must restrict all transmissions to the minimum practicable transmission time and employ an efficient operating procedure designed to **maximize the utilization of the spectrum**. Communications involving imminent threats to **safety of life or property** are to be afforded priority by all licensees. No licensee may transmit continuously on shared channels.

(d) Licensees must take reasonable precautions to **avoid causing harmful interference**. This includes monitoring the transmitting frequency for communications in progress and such other measures as may be necessary to minimize the potential for causing interference.

(e) Stations licensed in this part may **not continuously radiate an unmodulated carrier**, except where specifically permitted by this part or specifically authorized in the station authorization.

(f) **Suspension of operation**. The radiations of the transmitter must be suspended immediately upon detection or notification of a deviation from the

technical requirements of the station authorization and until such deviation is corrected. For transmissions concerning imminent threats to safety of life or property, the transmissions must be suspended as soon as the emergency is terminated.

§ 88.445 Trunked operations.

(a) Trunked operations will be authorized in the 220-222 MHz and in the bands above 800 MHz except as restricted in § 88.737.

(b) Trunked operations will be authorized in the **150-174 MHz and 421-512 MHz** bands as follows:

(1) The applicant has obtained **written concurrence** from all co-channel base station licensees located within 113 km (70 mi) or;

(2) The applicant has obtained **written concurrence** from all co-channel base station licensees located within 80 km (50 mi) and all co-channel base station licensees located between 113 km (70 mi) and 80 km (50 mi) whose stations **exceed** the power limitation of § 88.429.

§ 88.449 Prohibited uses.

Stations licensed under this part may not:

(a) Transmit program material of any kind for use in connection with **broadcasting**, except that SMR customers may utilize SMR service for broadcast on-air activities; or

(b) Render a **communications common carrier service**, except that a communications common carrier operating communications circuits that normally carry essential communication of such a nature that their disruption would endanger life or public property is eligible to hold authorizations for standby radio facilities for the transmission of messages only during periods when the normal circuits are inoperative due to circumstances beyond the control of the user. During such periods the radio facilities may be used to transmit any communication that would be carried by the regular circuit.

(c) Licensees **without channel exclusivity** may not engage in communications unrelated to business or safety of life or property.

§ 88.453 Emergency communications.

(a) The licensee of any station authorized under this part may, during a period of emergency in which the normal communication facilities are disrupted as a result of hurricane, flood, earthquake or similar disaster, **utilize such station for emergency communications** in a manner other than that specified in the station authorization or in the rules and regulations governing the operation of such stations. The Commission may at any time order the licensee to stop such special use of the authorized facilities.

(b) Any station licensed under this part may **communicate with any other station** without restriction as to type, service, or licensee when the communications involved relate directly to the imminent safety-of-life or property.

§ 88.457 Civil defense communications.

The licensee of any station authorized under this part may, on a voluntary basis, transmit communications necessary for the implementation of civil defense activities assigned such station by local civil defense authorities during an actual or simulated emergency, including drills and tests. The Commission may at any time order the licensee to stop such special use of the authorized facilities.

§ 88.461 Interstation communications.

(a) When coordination or cooperation is required, any station licensed under this part may **communicate with any other station** licensed under this part, with U.S. Government stations, and with foreign stations, provided that where the communication involves foreign stations prior approval of the Commission must be obtained, and such communication must be permitted by the government that authorizes the foreign station.

(b) Except for mutual aid channels in the 821-824/866-869 MHz band (see §§ 88.831-88.841), communications by governmental **police agency stations with foreign stations** will be approved only to be conducted in accordance with Article 5 of the Inter-American Radio Agreement, Washington, D.C., 1949. Request for such authority must be submitted in duplicate, indicate which station with which communication will be conducted, and specify the frequency, power, emission, etc., that will be used.

§ 88.465 Delegated use of authorized frequencies.

(a) Mobile units or frequencies **may be installed** in vehicles operated by persons other than the licensee as provided in the following paragraphs. The licensee is responsible for taking any necessary precaution to effectively eliminate the possibility of unauthorized operation of transmitters when not under the control of the licensee. If the number of units or frequencies so installed, together with units in vehicles operated by the licensee, exceeds the number of mobile units authorized to the licensee, a modification to the licensee's authorization will be required.

(b) Mobile units or frequencies licensed in the **Public Safety Radio Service** may be installed in any vehicle that in an emergency would require cooperation and coordination with the licensee, and in any vehicle used in the performance, under contract, of official activities of the licensee. This provision does not permit the installation of mobile units or frequencies in non-emergency vehicles not performing governmental functions under contract but with which the licensee might wish to communicate.

(c) Mobile units or frequencies may be installed in a vehicle or be hand-carried for use by any person with whom cooperation or coordination is required for **medical services activities**.

(d) Mobile units or frequencies licensed in the **Non-Commercial Radio or Specialized Mobile Radio Services** may be installed in vehicles of persons furnishing, under contract to or agreement with the licensee and for the duration of the contract or agreement, a facility or service directly related to the activities of the licensee.

(e) Mobile units or frequencies may be installed in the facilities of those who **assist the licensee in emergencies** and with whom the licensee must communicate in situations involving imminent safety to life or property.

§ 88.469 Operation in aircraft.

(a) Mobile stations authorized under this part **may be operated aboard aircraft** that are regularly flown at altitudes **below 1.6 km (1 mi)** above the earth's surface. Transmitter output power may not exceed ten watts and aircraft operations are secondary to land-based systems.

(b) **Exceptions** to the altitude and power limitations set forth in paragraph (a) of this section may be authorized on a showing of unusual operational requirements that justify departure from those standards, provided that the interference potential to regular land-based operations would not be increased.

(c) Operation of **radiolocation** mobile stations are exempt from the limitations and conditions of paragraph (a) of this section.

§ 88.473 Mobile relay stations.

(a) Mobile relay stations **will be authorized** in the 220-222, 450-470, 470-512, 806-824/851-869, and 896-901/935-940 MHz bands.

(1) On frequencies below 450 MHz, except for the 220-222 MHz band, mobile relay stations may be authorized within the contiguous 48 states to operate on frequencies listed in Subparts D and E, provided that the licensee has an exclusive use overlay license for that frequency at that site or has concurrence of all other licensees within 80 km (50 mi).

(2) On frequencies below 450 MHz, except for the 220-222 MHz band, mobile relay stations may be authorized outside the contiguous 48 states to operate on any frequency listed in Subparts D and E.

(3) Medical service systems in the 150-160 MHz band may be cross-banded for coordinated operations with mobile relay stations operating in the 450-470 MHz band.

(4) Mobile relay stations may be authorized on frequencies below 450 MHz reserved for low power operation listed in § 88.907. For such stations, the maximum output power may not exceed 1 watt and the mobile relay antenna system cannot be more than 13 m (40 ft) above ground.

(b) **Technical requirements** for mobile relay stations.

(1) Mobile relay stations with an output power of more than one watt must utilize coded signal or tone control devices to activate the station. The station must be deactivated when reception of the activating continuous coded tone signal stops.

(2) Except as provided in paragraph (3) of this section, a mobile relay station must be equipped for automatic deactivation of the transmitter within 5 seconds after the signals controlling the station cease. It also must have an automatic time delay or clock device that will, during periods that it is not controlled from a manned fixed control point, deactivate the station three minutes after the carrier stops.

(3) For licensees operating railroads or providing essential services to railroads, each mobile relay station must automatically deactivate when its associated receiver or receivers are not receiving a signal on the frequency or frequencies that normally activate it.

§ 88.477 Fixed relay stations.

Except where specifically provided for, fixed relay stations will be authorized to operate only on frequencies designated for fixed use.

§ 88.481 Mobile repeater stations.

A mobile station authorized to operate on a mobile service frequency above 25 MHz may be used as a mobile repeater to extend the communications range of hand-carried transmitters subject to the following:

(a) Mobile repeaters and/or associated hand-carried transmitters may be assigned non-exclusive base/mobile frequencies for this use **in addition to the number of frequencies normally assignable** to the licensee.

(b) **Low-power frequencies** below 450 MHz listed in § 88.907 may be assigned for use by mobile repeaters or by hand-carried transmitters whose communications are directed to mobile repeaters, when separate frequencies are assigned for that purpose.

(c) Except as provided in paragraph (d) of this section, hand-carried transmitters whose communications will be automatically relayed by mobile stations must be limited to a **maximum output power** of 2.5 watts.

(d) Hand-carried transmitters used in connection with mobile repeaters by licensees operating **railroads** may operate only above 150 MHz and, except when the same frequency is also used by the same station for direct communication

with vehicular mobile units or with one or more base stations, are limited to a maximum output power of 6 watts.

(e) The mobile repeater must be activated by means of a **continuous coded tone**, the absence of which will deactivate the transmitter. The coded tone is not required if the mobile repeater can be switched to an automatic mode and is also equipped with an automatic timer that deactivates the transmitter if an uninterrupted carrier remains on for more than three minutes.

§ 88.485 Control stations.

(a) Control stations associated with **base stations** will be authorized to operate on frequencies available for fixed use.

(b) Control stations associated with **mobile relay stations** will be assigned the frequency of the associated mobile station.

(c) Control stations may be authorized on a **temporary basis** to operate on Public Safety Radio Service frequencies available for base and mobile stations between 152 and 450 MHz, if it is shown that operations cannot be conducted on fixed use frequencies. Such operation will not be authorized initially or renewed for periods in excess of one year. Any such authorization will be subject to immediate termination if harmful interference is caused to stations in the mobile service, or if the particular frequency is required for mobile service operations in the area concerned.

(d) A base station that is used **intermittently** as a control station for one or more associated mobile relay stations of the same licensee must operate only on the frequency assigned to the associated mobile relay station when operating as a base station, and on the mobile frequency assigned to the associated mobile station when operating as a control station. Authority for such dual classification and use must be shown on the station authorization. When operating as a control station, the licensee must meet all control station requirements.

§ 88.489 Station identification.

(a) Except as provided for in paragraph (e) of this section, **each station** or system licensed under this part **must be identified** by the transmission of the assigned call sign during each transmission or exchange of transmissions, or once each 15 minutes (30 minutes in the Public Safety Radio Service) during periods of continuous operation. The call sign must be transmitted by voice in the English language or by International Morse Code in accordance with paragraph (b) of this section. If the station employs either analog or digital voice scrambling, or non-voice emission, transmission of the required identification must be in the unscrambled mode using A3E, F3E, or G3E emission, or International Morse Code, with all encoding disabled. Permissible alternative identification procedures are as follows:

(1) A base station (including a mobile relay station) controlled by radio may be identified by the transmission of the call sign of the station where

communications originate. A mobile relay station call sign may be used to identify the associated control and mobile stations.

(2) If a mobile station transmits on a different frequency than its associated base station, the assigned call sign of either the mobile station or the base station may be transmitted. Further, a single mobile unit in the licensee's authorized geographic area of operation may transmit station identification on behalf of any other operating mobile units in the fleet.

(3) In the Public Safety Radio Service, mobile units licensed to a governmental entity may use **special identifiers** that contain at least the name of the licensee. The licensee must maintain a list of the special identifier(s) to be used by the mobile units.

(4) Stations licensed to railroads may be identified by the assigned call signs or other identifiers designated by the licensee for use by its employees provided that a list of such identifiers is maintained by the licensee.

(b) **Automatically activated equipment** may be used to transmit station identification in International Morse Code pursuant to the following conditions:

(1) The Morse code transmission rate must be maintained between 20 and 25 words per minute, and the frequency of the keyed tone comprising the identification signal must be 1200 ± 800 Hz.

(2) Should activation of automatic Morse code identification equipment interrupt the communications of another co-channel licensee, the Commission may require the use of equipment that will delay automatic station identification until such co-channel communications are completed.

(c) **Trunked systems** of communication **must be identified** through the use of an automatic device that transmits the call sign of the base station facility at 30 minute intervals. Such station identification must be made on the lowest frequency in the base station trunk group assigned to the licensee. Should this frequency be in use at the time station identification is required, such identification may be made at the termination of the communication in progress on this frequency.

(d) **Data or non-voice transmissions** (see § 88.671) **may be identified** by data transmission of the station call sign. A licensee that identifies its station in this manner must provide the Commission, upon its request, information (such as digital codes and algorithms) sufficient to decipher the data transmission to ascertain the call sign transmitted.

(e) **Exemptions**. A station **need not transmit identification** if:

(1) It is a mobile station operating on the transmitting frequency of the associated base station.

(2) It is a mobile station in the Public Safety Radio Service using F1E or G1E emission.

(3) It is transmitting for telemetering purposes or for the activation of devices that are employed solely as a means of attracting attention, or for remote control purposes, or that is retransmitting by self-actuating means, a radio signal received from another radio station or stations.

(4) It is used solely for automatic vehicle monitoring or location.

(5) It is a paging station authorized in accordance with the provisions of § 88.1079.

(6) It is a mobile station employing non-voice emissions and the associated base station identifies on behalf of the mobile unit(s).

(7) It is a base or mobile station authorized to operate on a nationwide basis in accordance with §§ 88.977-88.987.

(8) It is a radiolocation station **except** that stations operating on frequencies above 3400 kHz that employ spread spectrum techniques must transmit a two-letter manufacturer's designator, authorized by the Commission on the station authorization, at the beginning and ending of each transmission and once every 15 minutes during periods of continuing operation. The designator must be transmitted in International Morse Code at a speed not exceeding 25 words per minute, and the spread spectrum mode of operation must be maintained while the designator is being transmitted. The identifying signal must be clearly receivable in the demodulated audio of a narrow-band FM receiver.

(9) It is a wireless microphone operation in the 169-172 MHz band operating pursuant to § 88.931.

Subpart D - Two-way Mobile Frequencies

§ 88.601 Scope.

The rules in this subpart govern the availability of specific channels for private two-way mobile-mobile or base-mobile operations. The first part of this subpart lists available frequencies by radio service. The second part provides limitations for specific frequencies. Finally, §§ 88.751-88.841 govern frequencies available in limited geographic markets, including the U.S./Canadian and U.S./Mexican border areas.

§ 88.605 Available frequencies

The following sections 88.613-88.625 list frequencies available in the majority of the United States. Unless otherwise stated, each frequency is available for both base and mobile use. Base station frequencies in the 220-221 MHz band are paired with a mobile-only frequency 1 MHz higher. Base station frequencies in the 450-455 and 460-465 MHz bands, unless otherwise indicated below, are paired with a mobile-only frequency 5 MHz higher. Base station frequencies in the 470-512 MHz band are paired with a mobile-only frequency 3 MHz higher. Base station frequencies in the 851-869 MHz band are paired with a mobile-only frequency 45 MHz lower. Base station frequencies in the 935-940 MHz band are paired with a mobile-only frequency 39 MHz lower. See §§ 88.801-88.841 for available frequencies above 800 MHz in areas less than 110 km (68.4 miles) from the U.S./Mexico border and less than 140 km (87 miles) from the U.S./Canada border. Also see, Subpart E for additional frequencies available for two-way mobile use.

§ 88.609 Additional rule sections governing specific frequency bands.

Band	Rule Sections	
Below 50 MHz	Harmful Interference Warning	§ 88.171(e)
	Number of frequencies	§ 88.243
150-174 MHz	Exclusive Use Overlay (EUO)	§ 88.179
	False or inaccurate EUO apps.	§ 88.103(f)
	Protection by EUO Licensees	§ 88.187
	EUO Preferences	§ 88.187
	EUO Eligibility	§ 88.191
	Temporary Licensing Freeze	§ 88.195
	Grant of Freeze	§ 88.199
	Additional Channels and EUO	§ 88.207
	Time to place in operation	§ 88.131(c)(EUO)
	Number of shared frequencies	§ 88.243
	Loading Standards	§ 88.273
	Wide-Area Systems	§ 88.277
	Freq. coord. exemption (EUO)	§ 88.305(d)(7)
	Interservice Sharing	§ 88.309
220-222 MHz	Supplemental Information	§ 88.83
	Grants of Applications	§ 88.103(c)

	No Partial Assignments	§ 88.127
	Cancelled Channels	§ 88.131(d)
	Construction Reporting	§ 88.139
	Exclusivity	§ 88.211
	Multichannel Systems	§ 88.235(a)
	Number of systems	§ 88.259
	Freq. coordination exemption	§ 88.305(d)(7)
450-470 MHz	Exclusive Use Overlay (EUO)	§ 88.179
	False or inaccurate EUO apps.	§ 88.103(f)
	Protection by EUO Licensees	§ 88.187
	EUO Preferences	§ 88.187
	EUO Eligibility	§ 88.191
	Temporary Licensing Freeze	§ 88.195
	Grant of Freeze	§ 88.199
	Additional Channels and EUO	§ 88.207
	Time to place in operation	§ 88.131(c)(EUO)
	Number of shared frequencies	§ 88.243
	Loading Standards	§ 88.273
	Wide-Area Systems.	§ 88.277
	Channel Takebacks	§ 88.245
	Freq. coord. exemption (EUO)	§ 88.305(d)(7)
	Interservice Sharing	§ 88.309
470-512 MHz	Loading criteria	§ 88.293
806-824/851-869 MHz	Amendment of Applications	§ 1.918(f)
	Supplemental Information	§ 88.83(d)
	Loading Data	§ 88.91
	SMR Waiting Lists	§ 88.107
	Time to place in operation	§ 88.131(b)(Trunked)
	Exclusivity (SMRs)	§ 88.215
	Exclusivity (Non-SMRs)	§ 88.219, § 88.223
	Multichannel Systems	§ 88.235(b)
	Number of conventional freq.	§ 88.247
	Number of trunked frequencies	§ 88.247
	Wide Area Systems	§ 88.255
	Loading (non-rural trunked)	§ 88.285
	Loading (rural trunked)	§ 88.287
	Loading (conventional)	§ 88.291
	Freq. coord. exemption (SMR)	§ 88.305(d)(7)
	Interservice Sharing	§ 88.313
896-901/935-940 MHz	Amendment of Applications	§ 1.918(f)
	Supplemental Information	§ 88.83(d)
	Loading Data	§ 88.91
	Time to place in operation	§ 88.131(b)(Trunked)
	Exclusivity (SMRs)	§ 88.215
	Exclusivity (Non-SMRs)	§ 88.219, § 88.223
	Multichannel Systems	§ 88.235(c)
	Number of conventional freq.	§ 88.247
	Number of trunked frequencies	§ 88.247
	Wide Area Systems	§ 88.255
	Loading (non-rural trunked)	§ 88.285
	Loading (rural trunked)	§ 88.287

Loading (conventional)	§ 88.291
Interservice Sharing	§ 88.313

§ 88.613 Public Safety Radio Service frequencies.

The following 18 frequencies below 25 kHz, 277 frequencies in the 25-50 MHz band, 458 frequencies in the 150-174 MHz band, 296 frequency pairs in the 450-470 MHz band, and 70 frequency pairs in the 806-821/851-866 MHz band are available. In addition, see §§ 88.831 and 88.833 for 130 National Public Safety Plan frequency pairs.

Frequency or band	Limitations
Kilohertz:	
1630	
1722	88.713 (750 Watts)
1730	88.713 (750 Watts)
2212	88.635 (Secondary to Canada)
2226	88.635 (Secondary to Canada)
2236	88.635 (Secondary to Canada)
2244	
2366	88.635 (Secondary to Canada)
2382	
2390	88.635 (Secondary to Canada)
2406	
2430	
2442	
2450	
2458	
2482	
2490	88.713 (750 Watts)
2726	88.651 (State Guard)
Megahertz:	
31.18	88.647 (State Plans)
31.22	88.647 (State Plans)
31.26	88.647 (State Plans)
31.30	88.647 (State Plans)
31.34	88.647 (State Plans)
31.38	88.647 (State Plans)
31.42	88.647 (State Plans)
31.46	88.647 (State Plans)
31.50	88.647 (State Plans)
31.54	88.647 (State Plans)
31.58	88.647 (State Plans)
31.62	88.647 (State Plans)
31.66	88.647 (State Plans)
31.70	88.647 (State Plans)

31.74	88.647 (State Plans)
31.78	88.647 (State Plans)
31.82	88.647 (State Plans)
31.86	88.647 (State Plans)
31.90	88.647 (State Plans)
31.94	88.647 (State Plans)
31.98	88.647 (State Plans)
33.44	
33.46	Mobile Only
33.48	
33.50	Mobile Only
33.52	
33.54	Mobile Only
33.56	
33.58	Mobile Only
33.60	
33.62	Mobile Only
33.64	
33.66	Mobile Only
33.68	
33.70	
33.72	
33.74	
33.76	
33.78	
33.80	
33.82	
33.84	
33.86	
33.88	
33.90	
33.92	
33.94	
33.96	
33.98	
37.02	Mobile Only
37.04	
37.06	
37.08	
37.10	
37.12	
37.14	
37.16	
37.18	
37.20	
37.22	
37.24	
37.26	
37.28	
37.30	
37.32	
37.34	Mobile Only

37.36	
37.38	Mobile Only
37.40	
37.42	Mobile Only
37.92	
37.96	
39.02	
39.04	
39.08	
39.10	
39.12	
39.14	
39.16	
39.18	
39.20	
39.22	
39.24	
39.26	Mobile Only
39.28	
39.30	Mobile Only
39.32	
39.34	Mobile Only
39.36	
39.38	Mobile Only
39.40	
39.42	
39.44	
39.48	
39.50	
39.52	
39.54	
39.56	
39.58	
39.60	
39.62	
39.64	
39.66	Mobile Only
39.68	
39.70	Mobile Only
39.72	
39.74	Mobile Only
39.76	
39.78	Mobile Only
39.80	
39.82	
39.84	
39.86	
39.88	
39.90	
39.92	
39.94	
39.96	

39.98	
42.02	88.647 (State Plans), 88.713 (750 Watts)
42.04	88.647 (State Plans), 88.713 (750 Watts)
42.06	88.647 (State Plans), 88.713 (750 Watts)
42.08	88.647 (State Plans), 88.713 (750 Watts)
42.10	88.647 (State Plans), 88.713 (750 Watts)
42.12	88.647 (State Plans), 88.713 (750 Watts)
42.14	88.647 (State Plans), 88.713 (750 Watts)
42.16	88.647 (State Plans), 88.713 (750 Watts)
42.18	Mobile Only, 88.647 (State Plans)
42.20	Mobile Only, 88.647 (State Plans)
42.22	Mobile Only, 88.647 (State Plans)
42.24	Mobile Only, 88.647 (State Plans)
42.26	Mobile Only, 88.647 (State Plans)
42.28	Mobile Only, 88.647 (State Plans)
42.30	Mobile Only, 88.647 (State Plans)
42.32	88.647 (State Plans), 88.713 (750 Watts)
42.34	88.647 (State Plans), 88.713 (750 Watts)
42.36	88.647 (State Plans), 88.713 (750 Watts)
42.38	88.647 (State Plans), 88.713 (750 Watts)
42.40	88.647 (State Plans), 88.1323 (Meteor Burst)
42.42	88.647 (State Plans), 88.713 (750 Watts)
42.44	88.647 (State Plans), 88.713 (750 Watts)
42.46	88.647 (State Plans), 88.713 (750 Watts)
42.48	88.647 (State Plans), 88.713 (750 Watts)
42.50	88.647 (State Plans), 88.713 (750 Watts)
42.52	88.647 (State Plans), 88.713 (750 Watts)
42.54	88.647 (State Plans), 88.713 (750 Watts)
42.56	88.647 (State Plans), 88.713 (750 Watts)
42.58	88.647 (State Plans), 88.713 (750 Watts)
42.60	88.647 (State Plans), 88.713 (750 Watts)
42.62	88.647 (State Plans), 88.713 (750 Watts)
42.64	88.647 (State Plans), 88.713 (750 Watts)
42.66	Mobile Only, 88.647 (State Plans)
42.68	Mobile Only, 88.647 (State Plans)
42.70	Mobile Only, 88.647 (State Plans)
42.72	Mobile Only, 88.647 (State Plans)
42.74	Mobile Only, 88.647 (State Plans)
42.76	Mobile Only, 88.647 (State Plans)
42.78	Mobile Only, 88.647 (State Plans)
42.80	88.647 (State Plans), 88.713 (750 Watts)
42.82	88.647 (State Plans), 88.713 (750 Watts)
42.84	88.647 (State Plans), 88.713 (750 Watts)
42.86	88.647 (State Plans), 88.713 (750 Watts)
42.88	88.647 (State Plans), 88.713 (750 Watts)
42.90	88.647 (State Plans), 88.713 (750 Watts)
42.92	88.647 (State Plans), 88.713 (750 Watts)
42.94	88.647 (State Plans), 88.713 (750 Watts)
44.62	88.647 (State Plans), 88.713 (750 Watts)
44.64	
44.66	88.647 (State Plans), 88.713 (750 Watts)
44.68	

44.70	88.647 (State Plans), 88.713 (750 Watts)
44.72	
44.74	88.647 (State Plans), 88.713 (750 Watts)
44.76	
44.78	Mobile Only, 88.647 (State Plans)
44.80	
44.82	Mobile Only, 88.647 (State Plans)
44.84	
44.86	Mobile Only, 88.647 (State Plans)
44.88	
44.90	Mobile Only, 88.647 (State Plans)
44.92	
44.94	88.647 (State Plans), 88.713 (750 Watts)
44.96	
44.98	88.647 (State Plans), 88.713 (750 Watts)
45.00	
45.02	88.647 (State Plans), 88.713 (750 Watts)
45.04	
45.06	88.647 (State Plans), 88.713 (750 Watts)
45.08	
45.10	
45.12	
45.14	
45.16	
45.18	
45.20	
45.22	
45.24	
45.26	Mobile Only
45.28	
45.30	Mobile Only
45.32	
45.34	Mobile Only
45.36	
45.38	Mobile Only
45.40	
45.42	
45.44	
45.46	
45.48	
45.50	
45.52	
45.54	
45.56	
45.58	
45.60	
45.62	
45.64	
45.66	
45.68	
45.70	
45.72	

45.74	Mobile Only
45.76	
45.78	Mobile Only
45.80	
45.82	Mobile Only
45.84	
45.90	88.1323 (Meteor Burst)
45.98	
46.02	
46.06	
46.08	
46.10	
46.12	
46.14	
46.16	
46.18	
46.20	
46.22	Mobile Only
46.24	Mobile Only
46.26	Mobile Only
46.28	Mobile Only
46.32	Mobile Only
46.34	Mobile Only
46.36	
46.38	
46.40	
46.42	
46.44	
46.46	
46.48	
46.50	
46.52	
46.54	
46.56	
46.58	
47.02	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.04	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.06	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.08	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.10	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.12	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.14	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.16	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.18	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.20	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.22	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.24	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.26	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.28	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.30	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.32	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.34	88.717 (Vehicle Detectors), 88.647 (State Plans)

47.36	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.38	88.717 (Vehicle Detectors), 88.647 (State Plans)
47.40	88.717 (Vehicle Detectors), 88.647 (State Plans)
150.995	88.753 (Gen Pool in PR, VI)
151.000	88.753 (Gen Pool in PR, VI)
151.010	88.753 (Gen Pool in PR, VI)
151.015	88.753 (Gen Pool in PR, VI)
151.025	88.753 (Gen Pool in PR, VI)
151.030	88.753 (Gen Pool in PR, VI)
151.040	88.753 (Gen Pool in PR, VI)
151.045	88.753 (Gen Pool in PR, VI)
151.055	88.753 (Gen Pool in PR, VI)
151.060	88.753 (Gen Pool in PR, VI)
151.070	88.753 (Gen Pool in PR, VI)
151.075	88.753 (Gen Pool in PR, VI)
151.085	88.753 (Gen Pool in PR, VI)
151.090	88.753 (Gen Pool in PR, VI)
151.100	88.753 (Gen Pool in PR, VI)
151.105	88.753 (Gen Pool in PR, VI)
151.115	88.753 (Gen Pool in PR, VI)
151.120	88.753 (Gen Pool in PR, VI)
151.130	88.753 (Gen Pool in PR, VI)
151.135	88.753 (Gen Pool in PR, VI)
151.145	88.753 (Gen Pool in PR, VI)
151.150	88.753 (Gen Pool in PR, VI)
151.160	88.753 (Gen Pool in PR, VI)
151.165	88.753 (Gen Pool in PR, VI)
151.175	88.753 (Gen Pool in PR, VI)
151.180	88.753 (Gen Pool in PR, VI)
151.190	88.753 (Gen Pool in PR, VI)
151.195	88.753 (Gen Pool in PR, VI)
151.205	88.753 (Gen Pool in PR, VI)
151.210	88.753 (Gen Pool in PR, VI)
151.220	88.753 (Gen Pool in PR, VI)
151.225	88.753 (Gen Pool in PR, VI)
151.235	88.753 (Gen Pool in PR, VI)
151.240	88.753 (Gen Pool in PR, VI)
151.250	88.753 (Gen Pool in PR, VI)
151.255	88.753 (Gen Pool in PR, VI)
151.265	88.753 (Gen Pool in PR, VI)
151.270	88.753 (Gen Pool in PR, VI)
151.280	88.753 (Gen Pool in PR, VI)
151.285	88.753 (Gen Pool in PR, VI)
151.295	88.753 (Gen Pool in PR, VI)
151.300	88.753 (Gen Pool in PR, VI)
151.310	88.753 (Gen Pool in PR, VI)
151.315	88.753 (Gen Pool in PR, VI)
151.325	88.753 (Gen Pool in PR, VI)
151.330	88.753 (Gen Pool in PR, VI)
151.340	88.753 (Gen Pool in PR, VI)
151.345	88.753 (Gen Pool in PR, VI)
151.355	88.753 (Gen Pool in PR, VI)

151.360	88.753 (Gen Pool in PR, VI)
151.370	88.753 (Gen Pool in PR, VI)
151.375	88.753 (Gen Pool in PR, VI)
151.385	88.753 (Gen Pool in PR, VI)
151.390	88.753 (Gen Pool in PR, VI)
151.400	88.753 (Gen Pool in PR, VI)
151.405	88.753 (Gen Pool in PR, VI)
151.415	88.753 (Gen Pool in PR, VI)
151.420	88.753 (Gen Pool in PR, VI)
151.430	88.753 (Gen Pool in PR, VI)
151.435	88.753 (Gen Pool in PR, VI)
151.445	88.753 (Gen Pool in PR, VI)
151.450	88.753 (Gen Pool in PR, VI)
151.460	88.753 (Gen Pool in PR, VI)
151.465	88.753 (Gen Pool in PR, VI)
151.475	88.753 (Gen Pool in PR, VI)
151.480	88.753 (Gen Pool in PR, VI)
153.740	Mobile Only
153.745	Mobile Only
153.755	Mobile Only
153.760	Mobile Only
153.770	Mobile Only
153.775	Mobile Only
153.785	Mobile Only
153.790	Mobile Only
153.800	Mobile Only
153.805	Mobile Only
153.815	Mobile Only
153.820	Mobile Only
153.830	Mobile Only
153.835	Mobile Only
153.845	Mobile Only
153.850	Mobile Only
153.860	Mobile Only
153.865	Mobile Only
153.875	Mobile Only
153.880	Mobile Only
153.890	Mobile Only
153.895	Mobile Only
153.905	Mobile Only
153.910	Mobile Only
153.920	Mobile Only
153.925	Mobile Only
153.935	Mobile Only
153.940	Mobile Only
153.950	Mobile Only
153.955	Mobile Only
153.965	Mobile Only
153.970	Mobile Only
153.980	Mobile Only
153.985	Mobile Only
153.995	Mobile Only

154.000		Mobile Only
154.010		Mobile Only
154.015		Mobile Only
154.025		
154.030		
154.040		88.639 (Unavailable in PR, VI)
154.045		88.639 (Unavailable in PR, VI)
154.055		88.639 (Unavailable in PR, VI)
154.060		88.639 (Unavailable in PR, VI)
154.070	Mobile Only,	88.639 (Unavailable in PR, VI)
154.075	Mobile Only,	88.639 (Unavailable in PR, VI)
154.085		88.639 (Unavailable in PR, VI)
154.090		88.639 (Unavailable in PR, VI)
154.100		88.639 (Unavailable in PR, VI)
154.105		88.639 (Unavailable in PR, VI)
154.115		88.639 (Unavailable in PR, VI)
154.120		88.639 (Unavailable in PR, VI)
154.130		88.639 (Unavailable in PR, VI)
154.135		88.639 (Unavailable in PR, VI)
154.145		88.639 (Unavailable in PR, VI)
154.150		88.639 (Unavailable in PR, VI)
154.160		88.639 (Unavailable in PR, VI)
154.165		88.639 (Unavailable in PR, VI)
154.175		88.639 (Unavailable in PR, VI)
154.180		88.639 (Unavailable in PR, VI)
154.190		88.639 (Unavailable in PR, VI)
154.195		88.639 (Unavailable in PR, VI)
154.205		88.639 (Unavailable in PR, VI)
154.210		88.639 (Unavailable in PR, VI)
154.220		88.639 (Unavailable in PR, VI)
154.225		88.639 (Unavailable in PR, VI)
154.235		88.639 (Unavailable in PR, VI)
154.240		88.639 (Unavailable in PR, VI)
154.250		88.639 (Unavailable in PR, VI)
154.255		88.639 (Unavailable in PR, VI)
154.265		88.639 (Unavailable in PR, VI)
154.270		88.639 (Unavailable in PR, VI)
154.280		88.639 (Unavailable in PR, VI)
154.285		88.639 (Unavailable in PR, VI)
154.295		88.639 (Unavailable in PR, VI)
154.300		88.639 (Unavailable in PR, VI)
154.310		88.639 (Unavailable in PR, VI)
154.315		88.639 (Unavailable in PR, VI)
154.325		88.639 (Unavailable in PR, VI)
154.330		88.639 (Unavailable in PR, VI)
154.340		88.639 (Unavailable in PR, VI)
154.345		88.639 (Unavailable in PR, VI)
154.355		88.639 (Unavailable in PR, VI)
154.360		88.639 (Unavailable in PR, VI)
154.370		88.639 (Unavailable in PR, VI)
154.375		88.639 (Unavailable in PR, VI)
154.385		88.639 (Unavailable in PR, VI)

154.390	88.639 (Unavailable in PR, VI)
154.400	88.639 (Unavailable in PR, VI)
154.405	88.639 (Unavailable in PR, VI)
154.415	88.639 (Unavailable in PR, VI)
154.420	88.639 (Unavailable in PR, VI)
154.430	88.639 (Unavailable in PR, VI)
154.435	88.639 (Unavailable in PR, VI)
154.445	88.639 (Unavailable in PR, VI)
154.450	88.639 (Unavailable in PR, VI)
154.650	Mobile Only
154.655	Mobile Only
154.665	
154.670	
154.680	
154.685	
154.695	
154.700	
154.710	Mobile Only
154.715	Mobile Only
154.725	
154.730	
154.740	
154.745	
154.755	
154.760	
154.770	Mobile Only
154.775	Mobile Only
154.785	
154.790	
154.800	
154.805	
154.815	
154.820	
154.830	Mobile Only
154.835	Mobile Only
154.845	
154.850	
154.860	
154.865	
154.875	
154.880	
154.890	Mobile Only
154.895	Mobile Only
154.905	
154.910	
154.920	
154.925	
154.935	
154.940	
154.950	Mobile Only
154.955	Mobile Only
154.965	

154.970
154.980
154.985
154.995
155.000
155.010
155.015
155.025
155.030
155.040
155.045
155.055
155.060
155.070
155.075
155.085
155.090
155.100
155.105
155.115
155.120
155.130
155.135
155.145
155.150
155.190
155.195
155.250
155.255
155.310
155.315
155.325
155.330
155.340
155.345
155.355
155.360
155.370
155.375
155.385
155.390
155.400
155.405
155.415
155.420
155.430
155.435
155.445
155.450
155.460
155.465
155.490

155.495	
155.505	
155.510	
155.520	
155.525	
155.535	
155.540	
155.550	
155.555	
155.565	
155.570	
155.580	
155.585	
155.595	
155.600	
155.610	
155.615	
155.625	
155.630	
155.640	
155.645	
155.655	
155.660	
155.670	
155.675	
155.685	
155.690	
155.700	
155.705	
155.715	
155.720	
155.730	
155.735	
155.745	
155.750	
155.760	
155.765	
155.775	
155.780	
155.790	
155.795	
155.805	
155.810	
155.820	
155.825	
155.835	
155.840	
155.850	Mobile Only
155.855	Mobile Only
155.865	
155.870	
155.880	

155.885	
155.895	
155.900	
155.910	Mobile Only
155.915	Mobile Only
155.925	
155.930	
155.940	
155.945	
155.955	
155.960	
155.970	Mobile Only
155.975	Mobile Only
155.985	Mobile Only
155.990	Mobile Only
156.000	Mobile Only
156.005	Mobile Only
156.015	Mobile Only
156.020	Mobile Only
156.030	Mobile Only
156.035	Mobile Only
156.045	Mobile Only, 88.643 (Unavailable in New Orleans)
156.050	Mobile Only, 88.643 (Unavailable in New Orleans)
156.060	Mobile Only, 88.643 (Unavailable in New Orleans)
156.065	Mobile Only, 88.643 (Unavailable in New Orleans)
156.075	Mobile Only
156.080	Mobile Only
156.090	Mobile Only
156.095	Mobile Only
156.105	
156.110	
156.120	
156.125	
156.135	
156.140	
156.150	Mobile Only
156.155	Mobile Only
156.165	88.643 (Unavailable in New Orleans)
156.170	88.643 (Unavailable in New Orleans)
156.180	88.643 (Unavailable in New Orleans)
156.185	88.643 (Unavailable in New Orleans)
156.195	
156.200	
156.210	
156.215	
156.225	
156.230	
156.240	
156.245	
158.730	
158.735	
158.745	

158.750	
158.760	
158.765	
158.775	
158.780	
158.790	
158.795	
158.805	
158.810	
158.820	
158.825	
158.835	
158.840	
158.850	
158.855	
158.865	Mobile Only
158.870	Mobile Only
158.880	Mobile Only
158.885	Mobile Only
158.895	Mobile Only
158.900	Mobile Only
158.910	Mobile Only
158.915	Mobile Only
158.925	Mobile Only
158.930	Mobile Only
158.940	Mobile Only
158.945	Mobile Only
158.955	Mobile Only
158.960	Mobile Only
158.970	Mobile Only
158.975	Mobile Only
158.985	Mobile Only
158.990	Mobile Only
159.000	Mobile Only
159.005	Mobile Only
159.015	Mobile Only
159.020	Mobile Only
159.030	Mobile Only
159.035	Mobile Only
159.045	Mobile Only
159.050	Mobile Only
159.060	Mobile Only
159.065	Mobile Only
159.075	Mobile Only
159.080	Mobile Only
159.090	
159.095	
159.105	
159.110	
159.120	
159.125	
159.135	

159.140	
159.150	
159.155	
159.165	
159.170	
159.180	
159.185	
159.195	
159.200	
159.210	
159.215	
159.225	
159.230	
159.240	88.757 (Non-Commercial in PR, VI)
159.245	88.757 (Non-Commercial in PR, VI)
159.255	88.757 (Non-Commercial in PR, VI)
159.260	88.757 (Non-Commercial in PR, VI)
159.270	88.757 (Non-Commercial in PR, VI)
159.275	88.757 (Non-Commercial in PR, VI)
159.285	88.757 (Non-Commercial in PR, VI)
159.290	88.757 (Non-Commercial in PR, VI)
159.300	88.757 (Non-Commercial in PR, VI)
159.305	88.757 (Non-Commercial in PR, VI)
159.315	88.757 (Non-Commercial in PR, VI)
159.320	88.757 (Non-Commercial in PR, VI)
159.330	88.757 (Non-Commercial in PR, VI)
159.335	88.757 (Non-Commercial in PR, VI)
159.345	88.757 (Non-Commercial in PR, VI)
159.350	88.757 (Non-Commercial in PR, VI)
159.360	88.757 (Non-Commercial in PR, VI)
159.365	88.757 (Non-Commercial in PR, VI)
159.375	88.757 (Non-Commercial in PR, VI)
159.380	88.757 (Non-Commercial in PR, VI)
159.390	88.757 (Non-Commercial in PR, VI)
159.395	88.757 (Non-Commercial in PR, VI)
159.405	88.757 (Non-Commercial in PR, VI)
159.410	88.757 (Non-Commercial in PR, VI)
159.420	88.757 (Non-Commercial in PR, VI)
159.425	88.757 (Non-Commercial in PR, VI)
159.435	88.757 (Non-Commercial in PR, VI)
159.440	88.757 (Non-Commercial in PR, VI)
159.450	
159.455	
159.465	
159.470	
220.9025	88.671 (Ind Chn), 88.227 (Separation), 88.673 (EMS)
220.9075	88.671 (Ind Chn), 88.227 (Separation), 88.673 (EMS)
220.9125	88.671 (Ind Chn), 88.227 (Separation), 88.673 (EMS)
220.9175	88.671 (Ind Chn), 88.227 (Separation), 88.673 (EMS)
220.9225	88.671 (Ind Chn), 88.227 (Separation), 88.673 (EMS)
453.015625	88.1555 (Grandfathered Paging)
453.021875	88.1555 (Grandfathered Paging)

453.028125	88.1555 (Grandfathered Paging)
453.034375	88.1555 (Grandfathered Paging)
453.040625	
453.046875	
453.053125	
453.059375	
453.065625	88.1555 (Grandfathered Paging)
453.071875	88.1555 (Grandfathered Paging)
453.078125	88.1555 (Grandfathered Paging)
453.084375	88.1555 (Grandfathered Paging)
453.090625	
453.096875	
453.103125	
453.109375	
453.115625	88.1555 (Grandfathered Paging)
453.121875	88.1555 (Grandfathered Paging)
453.128125	88.1555 (Grandfathered Paging)
453.134375	88.1555 (Grandfathered Paging)
453.140625	
453.146875	
453.153125	
453.159375	
453.165625	88.1555 (Grandfathered Paging)
453.171875	88.1555 (Grandfathered Paging)
453.178125	88.1555 (Grandfathered Paging)
453.184375	88.1555 (Grandfathered Paging)
453.190625	
453.196875	
453.203125	
453.209375	
453.215625	
453.221875	
453.228125	
453.234375	
453.240625	
453.246875	
453.253125	
453.259375	
453.265625	
453.271875	
453.278125	
453.284375	
453.290625	
453.296875	
453.303125	
453.309375	
453.315625	
453.321875	
453.328125	
453.334375	
453.340625	
453.346875	

453.353125
453.359375
453.365625
453.371875
453.378125
453.384375
453.390625
453.396875
453.403125
453.409375
453.415625
453.421875
453.428125
453.434375
453.440625
453.446875
453.453125
453.459375
453.465625
453.471875
453.478125
453.484375
453.490625
453.496875
453.503125
453.509375
453.515625
453.521875
453.528125
453.534375
453.540625
453.546875
453.553125
453.559375
453.565625
453.571875
453.578125
453.584375
453.590625
453.596875
453.603125
453.609375
453.615625
453.621875
453.628125
453.634375
453.640625
453.646875
453.653125
453.659375
453.665625
453.671875

453.678125
453.684375
453.690625
453.696875
453.703125
453.709375
453.715625
453.721875
453.728125
453.734375
453.740625
453.746875
453.753125
453.759375
453.765625
453.771875
453.778125
453.784375
453.790625
453.796875
453.803125
453.809375
453.815625
453.821875
453.828125
453.834375
453.840625
453.846875
453.853125
453.859375
453.865625
453.871875
453.878125
453.884375
453.890625
453.896875
453.903125
453.909375
453.915625
453.921875
453.928125
453.934375
453.940625
453.946875
453.953125
453.959375
453.965625
453.971875
453.978125
453.984375
460.015625
460.021875

460.028125
460.034375
460.040625
460.046875
460.053125
460.059375
460.065625
460.071875
460.078125
460.084375
460.090625
460.096875
460.103125
460.109375
460.115625
460.121875
460.128125
460.134375
460.140625
460.146875
460.153125
460.159375
460.165625
460.171875
460.178125
460.184375
460.190625
460.196875
460.203125
460.209375
460.215625
460.221875
460.228125
460.234375
460.240625
460.246875
460.253125
460.259375
460.265625
460.271875
460.278125
460.284375
460.290625
460.296875
460.303125
460.309375
460.315625
460.321875
460.328125
460.334375
460.340625
460.346875

460.353125
460.359375
460.365625
460.371875
460.378125
460.384375
460.390625
460.396875
460.403125
460.409375
460.415625
460.421875
460.428125
460.434375
460.440625
460.446875
460.453125
460.459375
460.465625
460.471875
460.478125
460.484375
460.490625
460.496875
460.503125
460.509375
460.515625
460.521875
460.528125
460.534375
460.540625
460.546875
460.553125
460.559375
460.565625
460.571875
460.578125
460.584375
460.590625
460.596875
460.603125
460.609375
460.615625
460.621875
460.628125
460.634375
462.940625
462.946875 88.687 (MEDS-9A)
462.953125 88.687 (MEDS-9B)
462.959375
462.965625
462.971875 88.687 (MEDS-10A)

462.978125	88.687 (MEDS-10B)
462.984375	
462.990625	
462.996875	88.691 (MEDS-1A)
463.003125	88.691 (MEDS-1B)
463.009375	
463.015625	
463.021875	88.691 (MEDS-2A)
463.028125	88.691 (MEDS-2B)
463.034375	
463.040625	
463.046875	88.691 (MEDS-3A)
463.053125	88.691 (MEDS-3B)
463.059375	
463.065625	
463.071875	88.691 (MEDS-4A)
463.078125	88.691 (MEDS-4B)
463.084375	
463.090625	
463.096875	88.691 (MEDS-5A)
463.103125	88.691 (MEDS-5B)
463.109375	
463.115625	
463.121875	88.691 (MEDS-6A)
463.128125	88.691 (MEDS-6B)
463.134375	
463.140625	
463.146875	88.691 (MEDS-7A)
463.153125	88.691 (MEDS-7B)
463.159375	
463.165625	
463.171875	88.691 (MEDS-8A)
463.178125	88.691 (MEDS-8B)
463.184375	
854.9625	
854.9875	
855.2125	
855.2375	
855.4625	
855.4875	
855.7125	
855.7375	
855.9625	
855.9875	
856.2125	
856.2375	
856.2625	
856.4375	
856.4625	
856.4875	
856.7125	
856.7375	

856.7625
856.9375
856.9625
856.9875
857.2125
857.2375
857.2625
857.4375
857.4625
857.4875
857.7125
857.7375
857.7625
857.9375
857.9625
857.9875
858.2125
858.2375
858.2625
858.4375
858.4625
858.4875
858.7125
858.7375
858.7625
858.9375
858.9625
858.9875
859.2125
859.2375
859.2625
859.4375
859.4625
859.4875
859.7125
859.7375
859.7625
859.9375
859.9625
859.9875
860.2125
860.2375
860.2625
860.4375
860.4625
860.4875
860.7125
860.7375
860.7625
860.9375
860.9625
860.9875

§ 88.617 Non-Commercial Radio Service Frequencies.

The following 4 frequencies below 25 kHz, 318 frequencies in the 25-50 MHz band, 581 frequencies in the 150-174 MHz band, 420 frequency pairs in the 450-470 MHz band, 16 simplex frequencies in the 450-470 MHz band, 50 frequency pairs in the 806-821/851-866 MHz band and 99 frequency pairs in the 896-901/935-940 MHz band are available.

Frequency	Limitations
Kilohertz:	
2292	
2398	
3201	
4637.5	
Megahertz:	
25.02	88.1313 (Geophysical)
25.04	88.965 (Oil Spill)
25.06	88.1313 (Geophysical)
25.08	88.965 (Oil Spill), 88.659 (Sec to Maritime)
25.10	88.1313 (Geophysical), 88.659 (Sec to Maritime)
25.12	
25.14	88.1313 (Geophysical)
25.16	
25.18	88.1313 (Geophysical)
25.20	
25.22	
25.24	
25.26	
25.28	
25.30	
25.32	
27.43	88.721 (110 Watts)
27.45	88.721 (110 Watts)
29.71	
29.73	
29.75	
29.77	
29.79	
30.58	
30.60	
30.62	
30.64	88.953(b) (Perm. or Itinerant)
30.66	
30.68	
30.70	
30.72	

30.74		
30.76		88.721 (110 Watts)
30.78		
30.80		88.721 (110 Watts)
30.82		
30.86		
30.88		88.721 (110 Watts)
30.90		
30.92		88.721 (110 Watts)
30.94		
30.96		88.721 (110 Watts)
30.98		
31.00		88.721 (110 Watts)
31.02		
31.04		88.721 (110 Watts)
31.06		
31.08		
31.10		
31.12		
31.14		
31.16		88.721 (110 Watts)
31.20		88.721 (110 Watts)
31.24		88.721 (110 Watts)
31.28	88.953(b)	(Perm. or Itinerant)
31.32	88.953(b)	(Perm. or Itinerant)
31.36	88.953(b)	(Perm. or Itinerant)
31.40	88.953(b)	(Perm. or Itinerant)
31.48	88.953(b)	(Perm. or Itinerant)
31.52	88.953(b)	(Perm. or Itinerant)
31.56	88.953(b)	(Perm. or Itinerant)
31.60	88.953(b)	(Perm. or Itinerant)
31.64	88.953(b)	(Perm. or Itinerant)
31.68	88.953(b)	(Perm. or Itinerant)
31.72	88.953(b)	(Perm. or Itinerant)
31.76	88.953(b)	(Perm. or Itinerant)
31.80	88.953(b)	(Perm. or Itinerant)
31.84	88.953(b)	(Perm. or Itinerant)
31.88	88.953(b)	(Perm. or Itinerant)
31.92	88.953(b)	(Perm. or Itinerant)
31.96	88.953(b)	(Perm. or Itinerant)
33.02		
33.04		
33.06		
33.08		
33.10		
33.16		88.721 (110 Watts)
33.18		
33.20		
33.22		
33.24		
33.26		
33.28		

33.30		
33.32		
33.34		
33.36		
33.38		
35.06		88.721 (110 Watts)
35.08		88.721 (110 Watts)
35.10		88.721 (110 Watts)
35.12		88.721 (110 Watts)
35.14		88.721 (110 Watts)
35.16		
35.18		88.721 (110 Watts)
35.28	88.953(b)	(Perm. or Itinerant)
35.32	88.953(b)	(Perm. or Itinerant)
35.36	88.953(b)	(Perm. or Itinerant)
35.40	88.953(b)	(Perm. or Itinerant)
35.44	88.953(b)	(Perm. or Itinerant)
35.48	88.953(b)	(Perm. or Itinerant)
35.52	88.953(b)	(Perm. or Itinerant)
35.70		
35.72		
35.74		
35.76		
35.78		
35.80		
35.82		
35.84		
35.86		
35.88		88.721 (110 Watts)
35.90		88.721 (110 Watts)
35.92		88.721 (110 Watts)
35.94	88.953(b)	(Perm. or Itinerant)
35.96	88.953(b)	(Perm. or Itinerant)
35.98	88.953(b)	(Perm. or Itinerant)
37.44		
37.46		
37.48		
37.50		
37.52		
37.54		
37.56		
37.58		
37.60	Base, mobile, or operational fixed	
37.62		
37.64		
37.66		
37.68		
37.70		
37.72		
37.74		
37.76		
37.78		

37.80		
37.82		
37.84	Base, mobile or operational fixed	
37.86		
37.88		
37.90		
37.94		
37.98		
42.96		88.721 (110 Watts)
43.00		88.721 (110 Watts)
43.02	88.953(b)	(Perm. or Itinerant)
43.06	88.953(b)	(Perm. or Itinerant)
43.08	88.953(b)	(Perm. or Itinerant)
43.10	88.953(b)	(Perm. or Itinerant)
43.12	88.953(b)	(Perm. or Itinerant)
43.14	88.953(b)	(Perm. or Itinerant)
43.16		Mobile Only
43.18		
43.28	88.953(b)	(Perm. or Itinerant)
43.32	88.953(b)	(Perm. or Itinerant)
43.36	88.953(b)	(Perm. or Itinerant)
43.40	88.953(b)	(Perm. or Itinerant)
43.44	88.953(b)	(Perm. or Itinerant)
43.48	88.953(b)	(Perm. or Itinerant)
43.52	88.953(b)	(Perm. or Itinerant)
43.70		
43.72		
43.74		
43.76		
43.78		
43.80		
43.82		
43.84		
43.86		88.663 (Paired)
43.88		88.663 (Paired)
43.90		88.663 (Paired)
43.92		88.663 (Paired)
43.94		88.663 (Paired)
43.96		
43.98		
44.00		
44.02		
44.04		
44.06		
44.08		
44.10		88.1323 (Meteor Burst)
44.12		
44.14		
44.16		
44.18		
44.20		88.1323 (Meteor Burst)
44.24		

44.26
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44.36 88.663 (Paired)
44.38 88.663 (Paired)
44.40 88.663 (Paired)
44.42 88.663 (Paired)
44.44 88.663 (Paired)
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45.92
45.96
46.00
46.04
47.42 88.655 (Disaster Relief)
47.44
47.46
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49.42	
49.44	
49.46	
49.48	
49.50	
49.52	88.953(b) (Perm. or Itinerant)
49.54	88.953(b) (Perm. or Itinerant)
49.56	
49.58	88.953(b) (Perm. or Itinerant)
150.815	88.753 (Gen Pool in PR, VI)
150.820	88.753 (Gen Pool in PR, VI)
150.830	88.753 (Gen Pool in PR, VI)
150.835	88.753 (Gen Pool in PR, VI)
150.845	88.753 (Gen Pool in PR, VI)
150.850	88.753 (Gen Pool in PR, VI)
150.860	88.753 (Gen Pool in PR, VI)
150.865	88.753 (Gen Pool in PR, VI)
150.875	88.753 (Gen Pool in PR, VI)
150.880	88.753 (Gen Pool in PR, VI)
150.890	88.753 (Gen Pool in PR, VI)
150.895	88.753 (Gen Pool in PR, VI)
150.905	88.753 (Gen Pool in PR, VI)
150.910	88.753 (Gen Pool in PR, VI)
150.920	88.753 (Gen Pool in PR, VI)
150.925	88.753 (Gen Pool in PR, VI)
150.935	88.753 (Gen Pool in PR, VI)
150.940	88.753 (Gen Pool in PR, VI)
150.950	88.753 (Gen Pool in PR, VI)
150.955	88.753 (Gen Pool in PR, VI)
150.965	88.753 (Gen Pool in PR, VI)
150.970	88.753 (Gen Pool in PR, VI)
150.980	88.965 (Oil Spill)
150.985	88.965 (Oil Spill)
151.490	88.639 (Unavailable in PR, VI)

151.495	88.639 (Unavailable in PR, VI)
151.520	
151.525	
151.535	
151.540	
151.550	
151.555	
151.565	
151.570	
151.580	
151.585	
151.595	
151.600	
151.985	
151.990	
152.270	88.231 (Paired)
152.275	88.231 (Paired)
152.280	88.231 (Paired)
152.300	88.231 (Paired), 88.753 (Gen Pool in PR, VI)
152.305	88.231 (Paired), 88.753 (Gen Pool in PR, VI)
152.315	88.231 (Paired), 88.753 (Gen Pool in PR, VI)
152.320	88.231 (Paired), 88.753 (Gen Pool in PR, VI)
152.330	88.231 (Paired)
152.335	88.231 (Paired)
152.345	88.231 (Paired), 88.753 (Gen Pool in PR, VI)
152.350	88.231 (Paired), 88.753 (Gen Pool in PR, VI)
152.360	88.231 (Paired), 88.753 (Gen Pool in PR, VI)
152.360	88.231 (Paired), 88.753 (Gen Pool in PR, VI)
152.375	88.231 (Paired), 88.753 (Gen Pool in PR, VI)
152.380	88.231 (Paired), 88.753 (Gen Pool in PR, VI)
152.390	88.231 (Paired)
152.395	88.231 (Paired)
152.405	88.231 (Paired), 88.753 (Gen Pool in PR, VI)
152.410	88.231 (Paired), 88.753 (Gen Pool in PR, VI)
152.420	88.231 (Paired), 88.753 (Gen Pool in PR, VI)
152.425	88.231 (Paired), 88.753 (Gen Pool in PR, VI)
152.435	88.231 (Paired)
152.440	88.231 (Paired)
152.450	88.231 (Paired)
152.455	88.231 (Paired)
152.460	88.231 (Paired)
152.465	88.231 (Paired)
152.870	
152.875	
152.885	
152.890	
152.900	
152.905	
152.915	
152.920	
152.930	
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153.410
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153.685
153.695
153.700
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153.715

153.725	
153.730	
154.490	
154.495	
154.585	Mobile Only, 88.965 (Oil Spill)
155.160	
155.165	
155.175	
155.180	
155.205	
155.210	
155.220	
155.225	
155.235	
155.240	
155.265	
155.270	
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155.285	
155.295	
155.300	
157.470	
157.475	
157.485	
157.490	
157.500	
157.505	
157.515	
157.520	
157.530	Mobile Only, 88.231 (Paired)
157.535	Mobile Only, 88.231 (Paired)
157.545	Mobile Only, 88.231 (Paired)
157.550	Mobile Only, 88.231 (Paired)
157.560	Mobile Only, 88.231 (Paired), 88.753 (Gen Pool in PR, VI)
157.565	Mobile Only, 88.231 (Paired), 88.753 (Gen Pool in PR, VI)
157.575	Mobile Only, 88.231 (Paired), 88.753 (Gen Pool in PR, VI)
157.580	Mobile Only, 88.231 (Paired), 88.753 (Gen Pool in PR, VI)
157.590	Mobile Only, 88.231 (Paired)
157.595	Mobile Only, 88.231 (Paired)
157.605	Mobile Only, 88.231 (Paired), 88.753 (Gen Pool in PR, VI)
157.610	Mobile Only, 88.231 (Paired), 88.753 (Gen Pool in PR, VI)
157.620	Mobile Only, 88.231 (Paired), 88.753 (Gen Pool in PR, VI)
157.625	Mobile Only, 88.231 (Paired), 88.753 (Gen Pool in PR, VI)
157.635	Mobile Only, 88.231 (Paired), 88.753 (Gen Pool in PR, VI)
157.640	Mobile Only, 88.231 (Paired), 88.753 (Gen Pool in PR, VI)
157.650	Mobile Only, 88.231 (Paired)
157.655	Mobile Only, 88.231 (Paired)
157.665	Mobile Only, 88.231 (Paired), 88.753 (Gen Pool in PR, VI)
157.670	Mobile Only, 88.231 (Paired), 88.753 (Gen Pool in PR, VI)
157.680	Mobile Only, 88.231 (Paired), 88.753 (Gen Pool in PR, VI)
157.685	Mobile Only, 88.231 (Paired), 88.753 (Gen Pool in PR, VI)
157.695	Mobile Only, 88.231 (Paired)

157.700	Mobile Only, 88.231 (Paired)
157.710	Mobile Only, 88.231 (Paired)
157.715	Mobile Only, 88.231 (Paired)
157.720	Mobile Only, 88.231 (Paired)
157.725	Mobile Only, 88.231 (Paired)
158.130	
158.135	
158.145	
158.150	
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158.175	
158.180	
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158.270	
158.280	
158.285	
158.295	
158.300	
158.310	
158.315	
158.325	
158.330	
158.340	Mobile Only
158.345	
158.355	
158.360	
158.370	
158.375	
158.385	
158.390	
158.415	
158.420	
158.430	
158.435	
158.440	88.965 (Oil Spill)
158.445	Mobile Only, 88.965 (Oil Spill)
159.480	88.965 (Oil Spill)
159.485	88.965 (Oil Spill)
159.495	
159.500	
159.510	

159.515
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160.790	
160.800	
160.805	
160.815	
160.820	
160.830	
160.835	
160.845	
160.850	
160.860	88.641 (Shared in PR, VI)
160.865	88.641 (Shared in PR, VI)
160.875	88.641 (Shared in PR, VI)
160.880	88.641 (Shared in PR, VI)
160.890	88.641 (Shared in PR, VI)
160.895	88.641 (Shared in PR, VI)
160.905	88.641 (Shared in PR, VI)
160.910	88.641 (Shared in PR, VI)
160.920	88.641 (Shared in PR, VI)
160.925	88.641 (Shared in PR, VI)
160.935	88.641 (Shared in PR, VI)
160.940	88.641 (Shared in PR, VI)
160.950	88.641 (Shared in PR, VI)
160.955	88.641 (Shared in PR, VI)
160.965	88.641 (Shared in PR, VI)
160.970	88.641 (Shared in PR, VI)
160.980	88.641 (Shared in PR, VI)
160.985	88.641 (Shared in PR, VI)
160.995	88.641 (Shared in PR, VI)
161.000	88.641 (Shared in PR, VI)
161.010	88.641 (Shared in PR, VI)
161.015	88.641 (Shared in PR, VI)
161.025	88.641 (Shared in PR, VI)
161.030	88.641 (Shared in PR, VI)
161.040	88.641 (Shared in PR, VI)
161.045	88.641 (Shared in PR, VI)
161.055	88.641 (Shared in PR, VI)
161.060	88.641 (Shared in PR, VI)
161.070	88.641 (Shared in PR, VI)

161.075	88.641 (Shared in PR, VI)
161.085	88.641 (Shared in PR, VI)
161.090	88.641 (Shared in PR, VI)
161.100	88.641 (Shared in PR, VI)
161.105	88.641 (Shared in PR, VI)
161.115	88.641 (Shared in PR, VI)
161.120	88.641 (Shared in PR, VI)
161.130	88.641 (Shared in PR, VI)
161.135	88.641 (Shared in PR, VI)
161.145	88.641 (Shared in PR, VI)
161.150	88.641 (Shared in PR, VI)
161.160	88.641 (Shared in PR, VI)
161.165	88.641 (Shared in PR, VI)
161.175	88.641 (Shared in PR, VI)
161.180	88.641 (Shared in PR, VI)
161.190	88.641 (Shared in PR, VI)
161.195	88.641 (Shared in PR, VI)
161.205	88.641 (Shared in PR, VI)
161.210	88.641 (Shared in PR, VI)
161.220	88.641 (Shared in PR, VI)
161.225	88.641 (Shared in PR, VI)
161.235	88.641 (Shared in PR, VI)
161.240	88.641 (Shared in PR, VI)
161.250	88.641 (Shared in PR, VI)
161.255	88.641 (Shared in PR, VI)
161.265	88.641 (Shared in PR, VI)
161.270	88.641 (Shared in PR, VI)
161.280	88.641 (Shared in PR, VI)
161.285	88.641 (Shared in PR, VI)
161.295	88.641 (Shared in PR, VI)
161.300	88.641 (Shared in PR, VI)
161.310	88.641 (Shared in PR, VI)
161.315	88.641 (Shared in PR, VI)
161.325	88.641 (Shared in PR, VI)
161.330	88.641 (Shared in PR, VI)
161.340	88.641 (Shared in PR, VI)
161.345	88.641 (Shared in PR, VI)
161.355	88.641 (Shared in PR, VI)
161.360	88.641 (Shared in PR, VI)
161.370	88.641 (Shared in PR, VI)
161.375	88.641 (Shared in PR, VI)
161.385	88.639 (Unavailable in PR, VI)
161.390	88.639 (Unavailable in PR, VI)
161.400	88.639 (Unavailable in PR, VI)
161.405	88.639 (Unavailable in PR, VI)
161.415	88.639 (Unavailable in PR, VI)
161.420	88.639 (Unavailable in PR, VI)
161.430	88.639 (Unavailable in PR, VI)
161.435	88.639 (Unavailable in PR, VI)
161.445	88.639 (Unavailable in PR, VI)
161.450	88.639 (Unavailable in PR, VI)
161.460	88.639 (Unavailable in PR, VI)

161.465	88.639 (Unavailable in PR, VI)
161.475	88.639 (Unavailable in PR, VI)
161.480	88.639 (Unavailable in PR, VI)
161.490	88.639 (Unavailable in PR, VI)
161.495	88.639 (Unavailable in PR, VI)
161.505	88.639 (Unavailable in PR, VI)
161.510	88.639 (Unavailable in PR, VI)
161.520	88.639 (Unavailable in PR, VI)
161.525	88.639 (Unavailable in PR, VI)
161.535	88.639 (Unavailable in PR, VI)
161.540	88.639 (Unavailable in PR, VI)
161.550	88.639 (Unavailable in PR, VI)
161.555	88.639 (Unavailable in PR, VI)
161.565	88.639 (Unavailable in PR, VI)
161.570	88.639 (Unavailable in PR, VI)
173.220	
173.225	
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451.9625	88.679 (Offset)
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452.465625	
452.471875	
452.478125	
452.484375	
452.490625	
452.496875	
452.503125	
452.509375	
452.515625	88.683 (Simplex)
452.521875	88.683 (Simplex)
452.528125	88.683 (Simplex)
452.534375	88.683 (Simplex)
452.540625	88.683 (Simplex)
452.546875	88.683 (Simplex)
452.553125	88.683 (Simplex)
452.559375	88.683 (Simplex)
452.565625	88.683 (Simplex)
452.571875	88.683 (Simplex)
452.578125	88.683 (Simplex)
452.584375	88.683 (Simplex)
452.590625	88.683 (Simplex)
452.596875	88.683 (Simplex)
452.603125	88.683 (Simplex)
452.609375	88.683 (Simplex)
452.615625	
452.621875	
452.628125	
452.634375	
452.640625	
452.646875	
452.653125	
452.659375	
452.665625	
452.671875	
452.678125	
452.684375	
452.690625	
452.696875	

452.703125	
452.709375	
452.715625	
452.721875	
452.728125	
452.734375	
452.740625	
452.746875	
452.753125	
452.759375	
452.765625	
452.771875	
452.778125	
452.784375	
452.790625	
452.796875	
452.803125	
452.809375	
452.815625	
452.821875	
452.828125	
452.834375	
452.840625	
452.846875	
452.853125	
452.859375	
452.865625	
452.871875	
452.878125	
452.884375	
452.890625	
452.896875	
452.903125	
452.909375	
452.915625	88.725 (Locomotive)
452.921875	88.725 (Locomotive)
452.928125	88.725 (Locomotive)
452.934375	88.725 (Locomotive)
452.940625	88.725 (Locomotive)
452.946875	88.725 (Locomotive)
452.953125	88.725 (Locomotive)
452.959375	88.725 (Locomotive)
452.965625	
452.971875	
452.978125	
452.984375	
452.990625	
452.996875	
453.003125	
453.009375	
453.990625	88.965 (Oil Spill)
453.996875	88.965 (Oil Spill)

454.003125	88.965 (Oil Spill)
454.009375	88.965 (Oil Spill)
460.640625	88.729 (Airport)
460.646875	88.729 (Airport)
460.653125	88.729 (Airport)
460.659375	88.729 (Airport)
460.665625	88.729 (Airport)
460.671875	88.729 (Airport)
460.678125	88.729 (Airport)
460.684375	88.729 (Airport)
460.690625	88.729 (Airport)
460.696875	88.729 (Airport)
460.703125	88.729 (Airport)
460.709375	88.729 (Airport)
460.715625	88.729 (Airport)
460.721875	88.729 (Airport)
460.728125	88.729 (Airport)
460.734375	88.729 (Airport)
460.740625	88.729 (Airport)
460.746875	88.729 (Airport)
460.753125	88.729 (Airport)
460.759375	88.729 (Airport)
460.765625	88.729 (Airport)
460.771875	88.729 (Airport)
460.778125	88.729 (Airport)
460.784375	88.729 (Airport)
460.790625	88.729 (Airport)
460.796875	88.729 (Airport)
460.803125	88.729 (Airport)
460.809375	88.729 (Airport)
460.815625	88.729 (Airport)
460.821875	88.729 (Airport)
460.828125	88.729 (Airport)
460.834375	88.729 (Airport)
460.840625	88.729 (Airport)
460.846875	88.729 (Airport)
460.853125	88.729 (Airport)
460.859375	88.729 (Airport)
460.865625	88.729 (Airport)
460.871875	88.729 (Airport)
460.878125	88.729 (Airport)
460.884375	88.729 (Airport)
460.890625	88.733 (Central Station)
460.896875	88.733 (Central Station)
460.903125	88.733 (Central Station)
460.909375	88.733 (Central Station)
460.915625	88.733 (Central Station)
460.921875	88.733 (Central Station)
460.928125	88.733 (Central Station)
460.934375	88.733 (Central Station)
460.940625	88.733 (Central Station)
460.946875	88.733 (Central Station)

460.953125	88.733 (Central Station)
460.959375	88.733 (Central Station)
460.965625	88.733 (Central Station)
460.971875	88.733 (Central Station)
460.978125	88.733 (Central Station)
460.984375	88.733 (Central Station)
460.990625	88.733 (Central Station)
460.996875	88.733 (Central Station)
461.003125	88.733 (Central Station)
461.009375	88.733 (Central Station)
462.190625	
462.196875	
462.203125	
462.209375	
462.215625	
462.221875	
462.228125	
462.234375	
462.240625	
462.246875	
462.253125	
462.259375	
462.265625	
462.271875	
462.278125	
462.284375	
462.290625	
462.296875	
462.303125	
462.309375	
462.315625	
462.321875	
462.328125	
462.334375	
462.340625	
462.346875	
462.353125	
462.359375	
462.365625	
462.371875	
462.378125	
462.384375	
462.390625	
462.396875	
462.403125	
462.409375	
462.415625	
462.421875	
462.428125	
462.434375	
462.440625	
462.446875	

462.453125
462.459375
462.465625
462.471875
462.478125
462.484375
462.490625
462.496875
462.503125
462.509375
462.515625
462.521875
462.528125
462.534375
854.8625
854.8875
854.9125
854.9375
855.1125
855.1375
855.1625
855.1875
855.3625
855.3875
855.4125
855.4375
855.6125
855.6375
855.6625
855.6875
855.8625
855.8875
855.9125
855.9375
856.2875
856.3125
856.3375
856.3625
856.3875
856.4125
857.2875
857.3125
857.3375
857.3625
857.3875
857.4125
858.2875
858.3125
858.3375
858.3625
858.3875
858.4125

859.2875
859.3125
859.3375
859.3625
859.3875
859.4125
860.2875
860.3125
860.3375
860.3625
860.3875
860.4125
935.3875
935.4000
935.4125
935.4250
935.4375
935.4500
935.4625
935.4750
935.4875
935.5000
935.8875
935.9000
935.9125
935.9250
935.9375
935.9500
935.9625
935.9750
935.9875
936.0000
936.3875
936.4000
936.4125
936.4250
936.4375
936.4500
936.4625
936.4750
936.4875
936.5000
936.8875
936.9000
936.9125
936.9250
936.9375
936.9500
936.9625
936.9750
936.9875
937.0000

937.3875
937.4000
937.4125
937.4250
937.4375
937.4500
937.4625
937.4750
937.4875
937.5000
937.8875
937.9000
937.9125
937.9250
937.9375
937.9500
937.9625
937.9750
937.9875
938.0000
938.3875
938.4000
938.4125
938.4250
938.4375
938.4500
938.4625
938.4750
938.4875
938.5000
938.8875
938.9000
938.9125
938.9250
938.9375
938.9500
938.9625
938.9750
938.9875
939.0000
939.3875
939.4000
939.4125
939.4250
939.4375
939.4500
939.4625
939.4750
939.4875
939.5000
939.8875
939.9000

939.9125
939.9250
939.9375
939.9500
939.9625
939.9750
939.9875

§ 88.621 Specialized Mobile Radio (SMR) Service frequencies.

The following 280 base station frequencies in the 851-866 MHz band and 200 base station frequencies in the 935-940 MHz band are available.

856.0125, 856.0375, 856.0625, 856.0875, 856.1125, 856.1375, 856.1625,
856.1875, 856.5125, 856.5375, 856.5625, 856.5875, 856.6125, 856.6375,
856.6625, 856.6875, 857.0125, 857.0375, 857.0625, 857.0875, 857.1125,
857.1375, 857.1625, 857.1875, 857.5125, 857.5375, 857.5625, 857.5875,
857.6125, 857.6375, 857.6625, 857.6875, 858.0125, 858.0375, 858.0625,
858.0875, 858.1125, 858.1375, 858.1625, 858.1875, 858.5125, 858.5375,
858.5625, 858.5875, 858.6125, 858.6375, 858.6625, 858.6875, 859.0125,
859.0375, 859.0625, 859.0875, 859.1125, 859.1375, 859.1625, 859.1875,
859.5125, 859.5375, 859.5625, 859.5875, 859.6125, 859.6375, 859.6625,
859.6875, 860.0125, 860.0375, 860.0625, 860.0875, 860.1125, 860.1375,
860.1625, 860.1875, 860.5125, 860.5375, 860.5625, 860.5875, 860.6125,
860.6375, 860.6625, 860.6875, 861.0125, 861.0375, 861.0625, 861.0875,
861.1125, 861.1375, 861.1625, 861.1875, 861.2125, 861.2375, 861.2625,
861.2875, 861.3125, 861.3375, 861.3625, 861.3875, 861.4125, 861.4375,
861.4625, 861.4875, 861.5125, 861.5375, 861.5625, 861.5875, 861.6125,
861.6375, 861.6625, 861.6875, 861.7125, 861.7375, 861.7625, 861.7875,
861.8125, 861.8375, 861.8625, 861.8875, 861.9125, 861.9375, 861.9625,
861.9875, 862.0125, 862.0375, 862.0625, 862.0875, 862.1125, 862.1375,
862.1625, 862.1875, 862.2125, 862.2375, 862.2625, 862.2875, 862.3125,
862.3375, 862.3625, 862.3875, 862.4125, 862.4375, 862.4625, 862.4875,
862.5125, 862.5375, 862.5625, 862.5875, 862.6125, 862.6375, 862.6625,
862.6875, 862.7125, 862.7375, 862.7625, 862.7875, 862.8125, 862.8375,
862.8625, 862.8875, 862.9125, 862.9375, 862.9625, 862.9875, 863.0125,
863.0375, 863.0625, 863.0875, 863.1125, 863.1375, 863.1625, 863.1875,
863.2125, 863.2375, 863.2625, 863.2875, 863.3125, 863.3375, 863.3625,
863.3875, 863.4125, 863.4375, 863.4625, 863.4875, 863.5125, 863.5375,
863.5625, 863.5875, 863.6125, 863.6375, 863.6625, 863.6875, 863.7125,
863.7375, 863.7625, 863.7875, 863.8125, 863.8375, 863.8625, 863.8875,
863.9125, 863.9375, 863.9625, 863.9875, 864.0125, 864.0375, 864.0625,
864.0875, 864.1125, 864.1375, 864.1625, 864.1875, 864.2125, 864.2375,
864.2625, 864.2875, 864.3125, 864.3375, 864.3625, 864.3875, 864.4125,
864.4375, 864.4625, 864.4875, 864.5125, 864.5375, 864.5625, 864.5875,
864.6125, 864.6375, 864.6625, 864.6875, 864.7125, 864.7375, 864.7625,
864.7875, 864.8125, 864.8375, 864.8625, 864.8875, 864.9125, 864.9375,
864.9625, 864.9875, 865.0125, 865.0375, 865.0625, 865.0875, 865.1125,
865.1375, 865.1625, 865.1875, 865.2125, 865.2375, 865.2625, 865.2875,
865.3125, 865.3375, 865.3625, 865.3875, 865.4125, 865.4375, 865.4625,
865.4875, 865.5125, 865.5375, 865.5625, 865.5875, 865.6125, 865.6375,

865.6625, 865.6875, 865.7125, 865.7375, 865.7625, 865.7875, 865.8125,
865.8375, 865.8625, 865.8875, 865.9125, 865.9375, 865.9625, 865.9875,
935.0125, 935.0250, 935.0375, 935.0500, 935.0625, 935.0750, 935.0875,
935.1000, 935.1125, 935.1250, 935.2625, 935.2750, 935.2875, 935.3000,
935.3125, 935.3250, 935.3375, 935.3500, 935.3625, 935.3750, 935.5125,
935.5250, 935.5375, 935.5500, 935.5625, 935.5750, 935.5875, 935.6000,
935.6125, 935.6250, 935.7625, 935.7750, 935.7875, 935.8000, 935.8125,
935.8250, 935.8375, 935.8500, 935.8625, 935.8750, 936.0125, 936.0250,
936.0375, 936.0500, 936.0625, 936.0750, 936.0875, 936.1000, 936.1125,
936.1250, 936.2625, 936.2750, 936.2875, 936.3000, 936.3125, 936.3250,
936.3375, 936.3500, 936.3625, 936.3750, 936.5125, 936.5250, 936.5375,
936.5500, 936.5625, 936.5750, 936.5875, 936.6000, 936.6125, 936.6250,
936.7625, 936.7750, 936.7875, 936.8000, 936.8125, 936.8250, 936.8375,
936.8500, 936.8625, 936.8750, 937.0125, 937.0250, 937.0375, 937.0500,
937.0625, 937.0750, 937.0875, 937.1000, 937.1125, 937.1250, 937.2625,
937.2750, 937.2875, 937.3000, 937.3125, 937.3250, 937.3375, 937.3500,
937.3625, 937.3750, 937.5125, 937.5250, 937.5375, 937.5500, 937.5625,
937.5750, 937.5875, 937.6000, 937.6125, 937.6250, 937.7625, 937.7750,
937.7875, 937.8000, 937.8125, 937.8250, 937.8375, 937.8500, 937.8625,
937.8750, 938.0125, 938.0250, 938.0375, 938.0500, 938.0625, 938.0750,
938.0875, 938.1000, 938.1125, 938.1250, 938.2625, 938.2750, 938.2875,
938.3000, 938.3125, 938.3250, 938.3375, 938.3500, 938.3625, 938.3750,
938.5125, 938.5250, 938.5375, 938.5500, 938.5625, 938.5750, 938.5875,
938.6000, 938.6125, 938.6250, 938.7625, 938.7750, 938.7875, 938.8000,
938.8125, 938.8250, 938.8375, 938.8500, 938.8625, 938.8750, 939.0125,
939.0250, 939.0375, 939.0500, 939.0625, 939.0750, 939.0875, 939.1000,
939.1125, 939.1250, 939.2625, 939.2750, 939.2875, 939.3000, 939.3125,
939.3250, 939.3375, 939.3500, 939.3625, 939.3750, 939.5125, 939.5250,
939.5375, 939.5500, 939.5625, 939.5750, 939.5875, 939.6000, 939.6125,
939.6250, 939.7625, 939.7750, 939.7875, 939.8000, 939.8125, 939.8250,
939.8375, 939.8500, 939.8625, 939.8750

§ 88.625 General Category Pool frequencies.

The following 60 frequencies in the 150-174 MHz band, 125 frequency pairs in the 220-222 MHz band, 418 frequency pairs in the 450-470 MHz band, 200 frequency pairs in the 806-821/851-866 MHz band and 100 frequency pairs in the 896-901/935-940 MHz band are available.

Frequency	Limitations
Megahertz:	
151.610	88.667 (No Exclusivity)
151.615	88.667 (No Exclusivity)
151.640	88.667 (No Exclusivity)
151.645	88.667 (No Exclusivity)
151.655	88.667 (No Exclusivity)
151.660	88.667 (No Exclusivity)
151.670	88.667 (No Exclusivity)
151.675	88.667 (No Exclusivity)

151.685	88.667 (No Exclusivity)
151.690	88.667 (No Exclusivity)
151.700	88.667 (No Exclusivity)
151.705	88.667 (No Exclusivity)
151.715	88.667 (No Exclusivity)
151.720	88.667 (No Exclusivity)
151.730	88.667 (No Exclusivity)
151.735	88.667 (No Exclusivity)
151.745	88.667 (No Exclusivity)
151.750	88.667 (No Exclusivity)
151.760	88.667 (No Exclusivity)
151.765	88.667 (No Exclusivity)
151.775	88.667 (No Exclusivity)
151.780	88.667 (No Exclusivity)
151.790	88.667 (No Exclusivity)
151.795	88.667 (No Exclusivity)
151.805	88.667 (No Exclusivity)
151.810	88.667 (No Exclusivity)
151.820	88.667 (No Exclusivity)
151.825	88.667 (No Exclusivity)
151.835	88.667 (No Exclusivity)
151.840	88.667 (No Exclusivity)
151.850	88.667 (No Exclusivity)
151.855	88.667 (No Exclusivity)
151.865	88.667 (No Exclusivity)
151.870	88.667 (No Exclusivity)
151.880	88.667 (No Exclusivity)
151.885	88.667 (No Exclusivity)
151.895	88.667 (No Exclusivity)
151.900	88.667 (No Exclusivity)
151.910	88.667 (No Exclusivity)
151.915	88.667 (No Exclusivity)
151.925	88.667 (No Exclusivity)
151.930	88.667 (No Exclusivity)
151.940	88.667 (No Exclusivity)
151.945	88.667 (No Exclusivity)
151.955	88.667 (No Exclusivity)
151.960	88.667 (No Exclusivity)
151.970	88.667 (No Exclusivity)
151.975	88.667 (No Exclusivity)
154.505	88.667 (No Exclusivity)
154.510	88.667 (No Exclusivity)
154.515	88.667 (No Exclusivity)
154.520	88.667 (No Exclusivity)
154.525	88.667 (No Exclusivity)
154.530	88.667 (No Exclusivity)
154.540	88.667 (No Exclusivity)
154.545	88.667 (No Exclusivity)
154.555	88.667 (No Exclusivity)
154.560	88.667 (No Exclusivity)
220.0025	88.675 (Trunked), 88.227 (Special Separation)
220.0750	88.675 (Trunked), 88.227 (Special Separation)

220.0125	88.675 (Trunked), 88.227 (Special Separation)
220.0175	88.675 (Trunked), 88.227 (Special Separation)
220.0225	88.675 (Trunked), 88.227 (Special Separation)
220.0275	88.675 (Trunked), 88.227 (Special Separation)
220.0325	88.675 (Trunked), 88.227 (Special Separation)
220.0375	88.675 (Trunked), 88.227 (Special Separation)
220.0425	88.675 (Trunked), 88.227 (Special Separation)
220.0475	88.675 (Trunked), 88.227 (Special Separation)
220.0525	88.675 (Trunked), 88.227 (Special Separation)
220.0575	88.675 (Trunked), 88.227 (Special Separation)
220.0625	88.675 (Trunked), 88.227 (Special Separation)
220.0675	88.675 (Trunked), 88.227 (Special Separation)
220.0725	88.675 (Trunked), 88.227 (Special Separation)
220.0775	88.675 (Trunked), 88.227 (Special Separation)
220.0825	88.675 (Trunked), 88.227 (Special Separation)
220.0875	88.675 (Trunked), 88.227 (Special Separation)
220.0925	88.675 (Trunked), 88.227 (Special Separation)
220.0975	88.675 (Trunked), 88.227 (Special Separation)
220.1525	88.675 (Trunked), 88.227 (Special Separation)
220.1575	88.675 (Trunked), 88.227 (Special Separation)
220.1625	88.675 (Trunked), 88.227 (Special Separation)
220.1675	88.675 (Trunked), 88.227 (Special Separation)
220.1725	88.675 (Trunked), 88.227 (Special Separation)
220.1775	88.675 (Trunked), 88.227 (Special Separation)
220.1825	88.675 (Trunked), 88.227 (Special Separation)
220.1875	88.675 (Trunked), 88.227 (Special Separation)
220.1925	88.675 (Trunked), 88.227 (Special Separation)
220.1975	88.675 (Trunked), 88.227 (Special Separation)
220.2025	88.675 (Trunked)
220.2075	88.675 (Trunked)
220.2125	88.675 (Trunked)
220.2175	88.675 (Trunked)
220.2225	88.675 (Trunked)
220.2275	88.675 (Trunked)
220.2325	88.675 (Trunked)
220.2375	88.675 (Trunked)
220.2425	88.675 (Trunked)
220.2475	88.675 (Trunked)
220.3025	88.675 (Trunked)
220.3075	88.675 (Trunked)
220.3125	88.675 (Trunked)
220.3175	88.675 (Trunked)
220.3225	88.675 (Trunked)
220.3275	88.675 (Trunked)
220.3325	88.675 (Trunked)
220.3375	88.675 (Trunked)
220.3425	88.675 (Trunked)
220.3475	88.675 (Trunked)
220.3525	88.675 (Trunked)
220.3575	88.675 (Trunked)
220.3625	88.675 (Trunked)
220.3675	88.675 (Trunked)

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220.5475	88.675 (Trunked)
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220.6075	88.675 (Trunked)
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220.6175	88.675 (Trunked)
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220.6375	88.675 (Trunked)
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220.6475	88.675 (Trunked)
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851.3125	88.737 (Restricted Trunking)
851.3375	88.737 (Restricted Trunking)
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851.4375	88.737 (Restricted Trunking)
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RESTRICTED USE FREQUENCIES

§ 88.633 Assignment limitations.

The following sections list restrictions on use of various specific frequencies listed at Sections 88.613-88.629.

§ 88.635 Primary Canadian frequencies.

The use of the frequencies 2212, 2226, 2236, 2366 and 2390 kHz is on a secondary basis to any Canadian station.

§ 88.639 Frequencies unavailable in Puerto Rico and the Virgin Islands.

The frequencies 151.490, 154.040-154.445 and 161.385-161.565 MHz are not available for assignment in this service in Puerto Rico or the Virgin Islands. This restriction also includes Innovative Shared Use channels. See § 88.999.

§ 88.641 Shared frequencies in Puerto Rico and the Virgin Islands.

The frequencies 160.860-161.375 MHz are available in Puerto Rico and the Virgin Islands on a shared basis with remote pickup base and mobile stations. The exclusive use overlay option (see § 88.179) is not available for these frequencies. This restriction also includes Innovative Shared Use channels. See § 88.999.

§ 88.643 Frequencies unavailable in New Orleans.

The frequencies 156.040-156.065, 156.160-156.185 MHz may not be assigned within 100 miles of New Orleans (coordinates 29-56-53 N and 90-04-10 W). This restriction also includes Innovative Shared Use channels. See § 88.999.

§ 88.647 State Public Safety Plans.

The following frequencies are only available for assignment in accordance with a geographic assignment plan and are reserved primarily for assignment to state licensees. Assignments to other licensees will be made only where the frequency is required for coordinated operation with the State system to which the frequency is assigned. Any request for such assignment must be supported by a statement from the State system concerned, indicating that the assignment is necessary for coordination of activities.

31.18, 31.22, 31.26, 31.30, 31.34, 31.38, 31.42, 31.46, 31.50, 31.54, 31.58, 31.62, 31.66, 31.70, 31.74, 31.78, 31.82, 31.86, 31.90, 31.94, 31.98, 42.02, 42.04, 42.06, 42.08, 42.10, 42.12, 42.14, 42.16, 42.18, 42.20, 42.22, 42.24, 42.26, 42.28, 42.30, 42.32, 42.34, 42.36, 42.38, 42.40, 42.42, 42.44, 42.46, 42.48, 42.50, 42.52, 42.54, 42.56, 42.58, 42.60, 42.62, 42.64, 42.66, 42.68, 42.70, 42.72, 42.74, 42.76, 42.78, 42.80, 42.82, 42.84, 42.86, 42.88, 42.90, 42.92, 42.94, 44.62, 44.66, 44.70, 44.74, 44.78, 44.82, 44.86, 44.90, 44.94, 44.98, 47.02, 47.04, 47.06, 47.08, 47.10, 47.12, 47.14, 47.16, 47.18, 47.20, 47.22, 47.24, 47.26, 47.28, 47.30, 47.32, 47.34, 47.36, 47.38, 47.40

§ 88.651 State Guard frequency.

The frequency 2726 kHz is available for assignment to the official state guard or comparable organization of a State, territory, possession, or the District of Columbia that is shown to be duly created by law and subject to the control of the highest official of the governmental entity involved, and may be used for emergency communications and for essential communications related to training and maintenance of an efficient organization. In addition to base and mobile stations, this frequency may be assigned to fixed stations on a secondary basis to base or mobile stations. Upon a showing of need, the use of a second frequency in the band 2505-3500 kHz may be made available to these organizations through appropriate arrangements with Government agencies for restricted area use on a shared basis with maximum power output, emission, and hours of operation determined on the basis of the technical conditions involved in using the selected frequency in the particular area.

§ 88.655 National disaster relief frequency.

(a) The frequency 47.42 MHz is **reserved for assignment to organizations established for disaster relief purposes** having an emergency radio communications plan and may be used to operate radio stations for the transmission of communications relating to the safety of life or property, establishing and maintaining temporary relief facilities, and alleviating the emergency situation during periods of actual or impending emergency, or disaster, and until substantially normal conditions are restored.

(b) The **initial application** from a disaster relief organization must be accompanied by a copy of the charter or other authority under which the organization was established and a copy of its communications plan. The plan must fully describe the operation of the radio facilities and describe the method of integration into other communications facilities that normally would be available to assist in alleviating the emergency condition.

§ 88.659 Maritime Services frequencies.

Operation on the frequencies 25.08 and 25.10 MHz is secondary to stations in the maritime mobile service.

§ 88.663 Pairing of 43.86-43.94 MHz with 44.36-44.44 MHz.

In addition to single frequency operation, these frequencies are available to base and mobile stations for the paired frequency mode of operation. For two frequency systems, the separation between base and mobile transmit frequencies is 500 kHz with the base stations transmitting on the higher of the two frequencies.

§ 88.667 Shared use frequencies.

The exclusive use overlay option (see § 88.179) is not available for assignments on the frequencies 151.610-151.975, 154.505-154.560, 461.015625, 461.034375, 461.040625, 461.059375, 461.065625, 461.084375, 461.090625, 461.109375, 461.115625, 461.134375, 461.140625, 461.159375, 461.165625, 461.184375, 461.190625, 461.209375, 461.215625, 461.234375, 461.240625, 461.259375, 461.265625, 461.284375, 461.290625, 461.309375, 461.315625, 461.334375, 461.340625, 461.359375, 461.365625, 461.384375, 461.390625, 461.409375, 461.415625, 461.434375, 461.440625, 461.459375, 461.465625, 461.484375, 461.490625, 461.509375, 461.515625, 461.534375, 461.540625, 461.559375 and 461.565625 MHz.

§ 88.671 Individual channels in the 220-222 MHz band.

The frequencies 220.8525-220.9975 MHz are available to both Federal Government and non-Federal Government applicants, and may be assigned singly or in contiguous channel groups. The frequencies 220.9025-220.9975 MHz are set aside for data only operations until March 31, 2000. See § 88.911(e). SMRs must maintain records of the names and addresses of each customer and the dates that service commenced and terminated. These records must be made available to the Commission upon request. All licensees must report at the time of license renewal the number of mobile units being served to Land Mobile Branch, Licensing Division, Private Radio Bureau, Gettysburg, PA 17326.

§ 88.673 Emergency medical frequencies.

The frequencies 220.9025-220.9225 are available only to persons or entities engaged in the provision of basic or advanced life support services on an ongoing basis.

§ 88.675 Trunked systems in the 220-222 MHz band.

The frequencies 220.0025-220.0975, 220.1525-220.2475, 220.3025-220.3975, 220.4525-220.5475, 220.6025-220.6975 MHz are available to both Federal Government and non-Federal Government applicants for trunked operations or operations of equivalent or greater efficiency for non-commercial or SMR operations. Also see § 88.235(a). SMRs must maintain records of the names and addresses of each customer and the dates that service commenced and

terminated. These records must be made available to the Commission upon request. All licensees must report at the time of license renewal the number of mobile units being served to Land Mobile Branch, Licensing Division, Private Radio Bureau, Gettysburg, PA 17326.

§ 88.679 Co-Primary 450 MHz offset frequencies.

Licensees on the frequencies 451.7875, 451.8125, 451.8375, 451.8625, 451.8875, 451.9125, 451.9375, 451.9625, 451.9875 and 451.0125 may be authorized an antenna height up to 35 m. (100 ft.) above ground. Base stations using these frequencies must be located at least 15 km. (9 miles) from any base station on a frequency offset by 3.125 kHz.

§ 88.683 Simplex operations frequencies.

The frequencies 452.515625-452.609375 MHz are available only for single-frequency operation. (This does not include frequencies listed at § 88.907.)

§ 88.687 MEDS-9A, MEDS-9B, MEDS-10A, MEDS-10B.

For uniformity in usage, the frequency pairs 462.946875/467.946875, 462.953125/467.953125, 462.971875/467.971875, and 462.978125/467.978125 MHz may be referred to as MEDS-9A, MEDS-9B, MEDS-10A, MEDS-10B and may be used for intra-system and inter-system mutual assistance purposes. Systems using these channels may also transmit one-way alert-paging signals to ambulance and rescue squad personnel.

§ 88.691 MEDS-1A - MEDS-8B.

(a) For uniformity in usage, these frequency pairs may be referred to by channel name as follows:

462.996875/467.996875	MED-1A
463.003125/468.003125	MED-1B
463.021875/468.021875	MED-2A
463.028125/468.028125	MED-2B
463.046875/468.046875	MED-3A
463.053125/468.053125	MED-3B
463.071875/468.071875	MED-4A
463.078125/468.078125	MED-4B
463.096875/468.096875	MED-5A
463.103125/468.103125	MED-5B
463.121875/468.121875	MED-6A
463.128125/468.128125	MED-6B
463.146875/468.146875	MED-7A

463.153125/468.153125	MED-7B
463.171875/468.171875	MED-8A
463.178125/468.178125	MED-8B

(b) These channels are not available for **exclusive use overlay** assignments.

(c) **Multichannel capability**. Mobile or portable stations may employ equipment capable of transmitting and receiving on some or all of these 16 frequency pairs.

(d) The continuous mode of operation may be used for **telemetry** on these frequencies.

TECHNICAL AND OPERATIONAL LIMITATIONS

§ 88.711 Technical limitations.

The following sections govern technical restrictions on specific channels in addition to, or instead of those in Subpart C.

§ 88.713 Higher-power police low band VHF systems.

Base stations operating on one of the frequencies:

1722 kHz, 1730, 2490, 42.02 MHz, 42.04, 42.06, 42.08, 42.10, 42.12, 42.14, 42.16, 42.32, 42.34, 42.36, 42.38, 42.42, 42.44, 42.46, 42.48, 42.50, 42.52, 42.54, 42.56, 42.58, 42.60, 42.62, 42.64, 42.80, 42.82, 42.84, 42.86, 42.88, 42.90, 42.92, 42.94, 44.62, 44.66, 44.70, 44.74, 44.94, 44.98, 45.02, 45.06

serving state police mobile units may be authorized to use a maximum output power in excess of the maximum indicated in § 88.429, but not in excess of 750 watts. Such operation is secondary to other stations.

§ 88.717 Self-powered vehicle detectors.

The frequencies 47.02 - 47.40 MHz may be used for the operation of self-powered vehicle detectors by licensees of base/mobile stations in the Public Safety Radio Service subject to the following conditions:

(a) These frequencies may be used by licensees in the Public Safety Radio Service **without a separate license** for the purpose of operating self-powered vehicle detectors for traffic control and safety purposes.

(b) All stations are limited to **100 milliwatts** carrier power and F7W, F7X, F8W, F8X, F9W or F9X emissions.

(c) All operation is on a **secondary**, non-interference basis.

§ 88.721 110 watt operations.

Operation on the frequencies 27.43, 27.45, 30.76, 30.80, 30.88, 30.92, 30.96, 31.00, 31.04, 31.16, 31.20, 31.24 33.16, 35.06, 35.08, 35.10, 35.12, 35.14, 35.18, 35.70, 35.72, 35.88, 35.90, 35.92, 42.96 and 43.00 MHz is limited to a maximum transmitter output power of 110 watts.

§ 88.725 Slave locomotive control frequencies.

The frequencies 452.915625/457.915625, 452.921875/457.921875, 452.928125/457.928125, 452.934375/457.934375, 452.940625/457.940625, 452.946875/457.946875, 452.953125/457.953125 and 452.959375/457.959375 MHz are reserved for controlling locmotives. A1, A2, F1 and F2 emissions may be authorized.

§ 88.729 Airport frequencies.

Operation on the frequencies 460.640625-460.884375/460.640625-460.884375 MHz is subject to the following restrictions:

(a) Except as provided for in § 88.921, these frequency are only available for assignment to stations located **on or near airports** to persons or entities engaged in furnishing commercial air transportation service, or to a corporation or association for the purpose of furnishing radio communications service to persons so engaged. Stations on this frequency may be used only in connection with the servicing and supplying of aircraft.

(b) Common frequency **signal boosters** may be employed in accordance with the following criteria:

(1) The amplified signal is retransmitted only on the exact frequency of the originating base station.

(2) The booster is equipped with automatic gain control circuitry that will limit the total output of the booster to 500 milliwatts under all conditions.

(3) All such devices are installed with sufficient isolation between receiving and retransmitting circuits to prevent oscillation.

(4) The power of any emission except on frequencies within the 460.6375-460.8875 MHz band or on which there is an input signal to the booster, must be reduced at least 35 decibels below the total power output of the booster.

(5) In the event control of the booster is impaired due to its activation by signals other than those intended by the licensee to be retransmitted, the licensee must provide the booster with means of control such that it will be activated only by signals intended to be retransmitted, and boosters so

provided with such means of control must also be provided with an automatic time-delay or clock device that will deactivate the booster not more than 3 minutes after its activation.

(6) If signal boosters are to be used in conjunction with other facilities, the number of such boosters must be stated on the license application.

(c) Operations on these frequencies is limited to a **maximum output of 20 Watts** except as provided in § 88.921.

§ 88.733 Central station frequencies.

(a) Persons or entities rendering a **central station protection service** are authorized to operate fixed stations on the frequencies 460.890625-461.009375 MHz for the transmission of tone or impulse signals on a secondary, noninterference basis to base/mobile operations subject to the following conditions and limitations.

(1) The maximum duration of any one nonvoice signal may not exceed 2 seconds and must not be transmitted more than three times.

(2) Systems employing automatic interrogation must be limited to nonvoice techniques and must not be activated for this purpose more than 10 seconds out of any 60-second period. This 10-second frame includes both transmit and response times.

(3) Frequency loading resulting from the use of secondary signaling will not be considered in whole or in part as a justification for authorizing additional frequencies in the licensee's mobile system. These frequencies may not be used exclusively for secondary signaling.

(4) The output power must not exceed 30 watts (at the remote site).

(5) A1D, A2D, F1D, or F2D emission may be authorized.

(6) The transmitter must be designed to deactivate automatically after 3 minutes of continuous carrier radiation.

(7) Operational fixed stations authorized under this paragraph are exempt from the requirements of §§ 88.95(b) and 88.489.

(8) On these frequencies, base, mobile relay or mobile stations may transmit secondary tone or impulse signals to receivers, as provided in this section.

(b) Licensees providing a central station protection service **may communicate with police or fire stations**, or vehicles, on these frequency, and may install licensed transmitting units that operate on these frequencies at police or fire stations, or in police or fire vehicles, if the frequency's

primary use is in a base/mobile system for a centra
protection service.

§ 88.737 Restrictions on trunking in the 851-854.7

(a) A constructed system in the 851-854.750 M
to operate in the conventional mode may be combine
above 800 MHz authorized to operate in the trunked
authorized grant of one station to the other only

(1) The trunked system is **loaded** to 70 mobile

(2) The purpose of the assignment is to **expan**

(b) For all trunked systems that are not SMRs
must include a statement from the trunked system's
verifying that there are no available frequencies
service category in the frequency bands 806-824/85
that are SMRs must submit evidence of existence of
SMRs in the geographic area in lieu of this requir

(c) Each application must include a signed st
co-channel licensees (including call signs) locate
primary site of the trunked system verifying that
proposed trunked use (see Section 88.219 of this p

(d) Each of the stations licensed for channel
must be **constructed and operating**. Each applicati
of construction and operation signed by the licens
system. The statement of construction and operati
construction, location constructed (coordinates),
placed in operation (i.e., the date mobiles/portab
the mobile relay(s)), and a listing of the frequer

(e) All frequencies being trunked together must
site.

(f) As a result of the assignment the assignee
channels that does not exceed one channel more than
warrants. If, as a result of the assignment, the a
number of channels possible (one channel more thar
and if the assignee is on the SMR waiting list fo
which it receives the assignment, the assignee fo
waiting list.

(g) The assignee will receive a **new five-yea**

(h) Partial assignments are not permitted.

(i) Applicatins for conventional SMRs on these frequencies must be coordinated (see § 88.603) by ahy one of the frequency coordinators certified to coordinate applications above 800 MHz.

FREQUENCIES WITH GEOGRAPHIC LIMITATIONS

§ 88.751 Additional frequencies available.

The following sections govern frequencies available only in specific geographic areas, including the U.S./Canadian and U.S./Mexican border areas.

§ 88.753 General Category Pool frequencies in Puerto Rico and the Virgin Islands.

The frequencies 150.815-151.475, 152.300-152.315, 152.345-152.375, 152.405-152.420, 157.550-157.580, 157.605-157.640 and 157.665-157.685 MHz designated for use in the Non-Commercial or Public Safety Radio Services are also available in the General Category Pool in Puerto Rico and the Virgin Islands.

§ 88.757 Non-Commercial Radio Service frequencies in Puerto Rico and the Virgin Islands.

The base station frequencies listed below are available to Non-Commercial Radio Service licensees only in Puerto Rico and the Virgin Islands on a shared basis with the Public Safety Radio Service. The mobile only frequencies may be assigned to a control station associated with a mobile relay system if it is also assigned to the associated mobile station.

Base and mobile	Mobile only
159.240 MHz	160.410 MHz
159.245	160.415
159.255	160.425
159.260	160.430
159.270	160.440
159.275	160.445
159.285	160.455
159.290	160.460
159.300	160.470
159.305	160.475
159.315	160.485
159.320	160.490
159.330	160.500
159.335	160.505
159.345	160.515
159.350	160.520
159.360	160.530
159.365	160.535

159.375	160.545
159.380	160.550
159.390	160.560
159.395	160.565
159.405	160.575
159.410	160.580
159.420	160.590
159.425	160.595
159.435	160.605
159.440	160.610

§ 88.761 New York City only frequencies.

The frequencies 166.250, and 170.150 MHz may be assigned to stations in the Public Safety Radio Service, only at points within 240 km. (150 mi.) of New York, N.Y. Technical standards for these channels are those for Federal Government channels, rather than Subpart C.

§ 88.765 Forest Fire frequencies available east of the Mississippi.

The frequencies 170.475, 171.425, 171.575 and 172.275 MHz will be assigned only in areas east of the Mississippi and only to licensees directly responsible for the prevention, detection, and suppression of forest fires or to conservation agencies for mobile relay operation. Such use will be secondary to Federal use. Technical standards for these channels are those for Federal Government channels, rather than Subpart C.

§ 88.769 Forest Fire frequencies available west of the Mississippi.

The frequencies 170.425, 170.575, 171.475, 172.225 and 172.375 MHz will be assigned only in areas west of the Mississippi and only to licensees directly responsible for the prevention, detection, and suppression of forest fires. Such use will be secondary to Federal use. Technical standards for these channels are those for Federal Government channels, rather than Subpart C.

§ 88.773 Authorization in the 421-430 MHz band.

The frequency bands 422.1875-425.4875 MHz and 427.1875-429.9875 MHz are available for use in the Detroit, Michigan and Cleveland, Ohio areas. The bands 423.8125-425.4875 MHz and 428.8125-429.9875 MHz are available for use in the Buffalo, New York area. Sections 88.775 and 88.777 address the specific rules applicable to these bands. Use of these bands is also subject to the general technical standards, and application procedures are the same as those contained elsewhere in this Part for the 450-470 MHz band. See §§ 88.1189 and 88.1203 for rules on operational fixed stations. Private land mobile use of these frequencies is subject to accepting any interference from Federal

Government radiolocation operations. Also see § 88.245 on bandwidth reduction.

§ 88.775 Available frequencies in the 421-430 MHz band.

(a) The frequencies 422.190625 - 424.984375 MHz are **paired** with frequencies 427.190625 - 429.984375 MHz, respectively. Only the lower half of each frequency pair, available for base station operation, is listed in the tables. Corresponding mobile and control station frequencies are 5 MHz higher than the base station frequency. The frequencies 424.990625 - 425.484375 MHz are unpaired and are available for either single frequency dispatch or paging operations.

(b) The following base station frequencies are available for assignment in the **Public Safety Radio Service in the Detroit and Cleveland** areas:

422.990625, 422.996875, 423.003125, 423.009375, 423.015625, 423.021875,
423.028125, 423.034375, 423.040625, 423.046875, 423.053125, 423.059375,
423.065625, 423.071875, 423.078125, 423.084375, 423.090625, 423.096875,
423.103125, 423.109375, 423.115625, 423.121875, 423.128125, 423.134375,
423.140625, 423.146875, 423.153125, 423.159375, 423.165625, 423.171875,
423.178125, 423.184375, 423.190625, 423.196875, 423.203125, 423.209375,
423.215625, 423.221875, 423.228125, 423.234375, 423.240625, 423.246875,
423.253125, 423.259375, 423.265625, 423.271875, 423.278125, 423.284375,
423.290625, 423.296875, 423.303125, 423.309375, 423.315625, 423.321875,
423.328125, 423.334375, 423.340625, 423.346875, 423.353125, 423.359375,
423.365625, 423.371875, 423.378125, 423.384375, 423.390625, 423.396875,
423.403125, 423.409375, 423.415625, 423.421875, 423.428125, 423.434375,
423.440625, 423.446875, 423.453125, 423.459375, 423.465625, 423.471875,
423.478125, 423.484375, 423.490625, 423.496875, 423.503125, 423.509375,
423.515625, 423.521875, 423.528125, 423.534375, 423.540625, 423.546875,
423.553125, 423.559375, 423.565625, 423.571875, 423.578125, 423.584375,
423.590625, 423.596875, 423.603125, 423.609375, 423.615625, 423.621875,
423.628125, 423.634375, 423.640625, 423.646875, 423.653125, 423.659375,
423.665625, 423.671875, 423.678125, 423.684375, 423.690625, 423.696875,
423.703125, 423.709375, 423.715625, 423.721875, 423.728125, 423.734375,
423.740625, 423.746875, 423.753125, 423.759375, 423.765625, 423.771875,
423.778125, 423.784375, 423.790625, 423.796875, 423.803125, 423.809375

(c) The following base station frequencies are available for assignment in the **Non-Commercial Radio Service in the Detroit and Cleveland areas**:

422.190625, 422.196875, 422.203125, 422.209375, 422.215625, 422.221875,
422.228125, 422.234375, 422.240625, 422.246875, 422.253125, 422.259375,
422.265625, 422.271875, 422.278125, 422.284375, 422.290625, 422.296875,
422.303125, 422.309375, 422.315625, 422.321875, 422.328125, 422.334375,
422.340625, 422.346875, 422.353125, 422.359375, 422.365625, 422.371875,
422.378125, 422.384375, 422.390625, 422.396875, 422.403125, 422.409375,
422.415625, 422.421875, 422.428125, 422.434375, 422.440625, 422.446875,
422.453125, 422.459375, 422.465625, 422.471875, 422.478125, 422.484375,
422.490625, 422.496875, 422.503125, 422.509375, 422.515625, 422.521875,

422.528125, 422.534375, 422.540625, 422.546875, 422.553125, 422.559375, 422.565625, 422.571875, 422.578125, 422.584375

(d) The following base station frequencies are available for assignment in the **General Category Pool in the Detroit and Cleveland areas**:

422.590625, 422.596875, 422.603125, 422.609375, 422.615625, 422.621875, 422.628125, 422.634375, 422.640625, 422.646875, 422.653125, 422.659375, 422.665625, 422.671875, 422.678125, 422.684375, 422.690625, 422.696875, 422.703125, 422.709375, 422.715625, 422.721875, 422.728125, 422.734375, 422.740625, 422.746875, 422.753125, 422.759375, 422.765625, 422.771875, 422.778125, 422.784375, 422.790625, 422.796875, 422.803125, 422.809375, 422.815625, 422.821875, 422.828125, 422.834375, 422.840625, 422.846875, 422.853125, 422.859375, 422.865625, 422.871875, 422.878125, 422.884375, 422.890625, 422.896875, 422.903125, 422.909375, 422.915625, 422.921875, 422.928125, 422.934375, 422.940625, 422.946875, 422.953125, 422.959375, 422.965625, 422.971875, 422.978125, 422.984375

(e) The following base station frequencies are available for assignment in the **Public Safety Radio Service in the Buffalo, Detroit and Cleveland** areas:

423.815625, 423.821875, 423.828125, 423.834375, 423.840625, 423.846875, 423.853125, 423.859375, 423.865625, 423.871875, 423.878125, 423.884375, 423.890625, 423.896875, 423.903125, 423.909375, 423.915625, 423.921875, 423.928125, 423.934375, 423.940625, 423.946875, 423.953125, 423.959375, 423.965625, 423.971875, 423.978125, 423.984375, 423.990625, 423.996875, 424.003125, 424.009375, 424.015625, 424.021875, 424.028125, 424.034375, 424.040625, 424.046875, 424.053125, 424.059375, 424.065625, 424.071875, 424.078125, 424.084375, 424.090625, 424.096875, 424.103125, 424.109375, 424.115625, 424.121875, 424.128125, 424.134375, 424.140625, 424.146875, 424.153125, 424.159375, 424.165625, 424.171875, 424.178125, 424.184375, 424.190625, 424.196875, 424.203125, 424.209375, 424.215625, 424.221875, 424.228125, 424.234375, 424.240625, 424.246875, 424.253125, 424.259375, 424.265625, 424.271875, 424.278125, 424.284375, 424.290625, 424.296875, 424.303125, 424.309375, 424.315625, 424.321875, 424.328125, 424.334375, 424.340625, 424.346875, 424.353125, 424.359375, 424.365625, 424.371875, 424.378125, 424.384375, 425.240625, 425.246875, 425.253125, 425.259375, 425.265625, 425.271875, 425.278125, 425.284375, 425.290625, 425.296875, 425.303125, 425.309375, 425.315625, 425.321875, 425.328125, 425.334375, 425.340625, 425.346875, 425.353125, 425.359375, 425.365625, 425.371875, 425.378125, 425.384375, 425.390625, 425.396875, 425.403125, 425.409375, 425.415625, 425.421875, 425.428125, 425.434375, 425.440625, 425.446875, 425.453125, 425.459375, 425.465625, 425.471875, 425.478125, 425.484375

(f) The following base station frequencies are available for assignment in the **Non-Commercial Radio Service in the Buffalo, Detroit and Cleveland** areas:

424.390625, 424.396875, 424.403125, 424.409375, 424.415625, 424.421875, 424.428125, 424.434375, 424.440625, 424.446875, 424.453125, 424.459375, 424.465625, 424.471875, 424.478125, 424.484375, 424.490625, 424.496875,

424.503125, 424.509375, 424.515625, 424.521875, 424.528125, 424.534375, 424.540625, 424.546875, 424.553125, 424.559375, 424.565625, 424.571875, 424.578125, 424.584375, 424.590625, 424.596875, 424.603125, 424.609375, 424.615625, 424.621875, 424.628125, 424.634375, 424.640625, 424.646875, 424.653125, 424.659375, 424.665625, 424.671875, 424.678125, 424.684375, 425.115625, 425.121875, 425.128125, 425.134375, 425.140625, 425.146875, 425.153125, 425.159375, 425.165625, 425.171875, 425.178125, 425.184375, 425.190625, 425.196875, 425.203125, 425.209375, 425.215625, 425.221875, 425.228125, 425.234375

(g) The following base station frequencies are available for assignment in the **General Category Pool in the Buffalo, Detroit and Cleveland** areas:

424.690625, 424.696875, 424.703125, 424.709375, 424.715625, 424.721875, 424.728125, 424.734375, 424.740625, 424.746875, 424.753125, 424.759375, 424.765625, 424.771875, 424.778125, 424.784375, 424.790625, 424.796875, 424.803125, 424.809375, 424.815625, 424.821875, 424.828125, 424.834375, 424.840625, 424.846875, 424.853125, 424.859375, 424.865625, 424.871875, 424.878125, 424.884375, 424.890625, 424.896875, 424.903125, 424.909375, 424.915625, 424.921875, 424.928125, 424.934375, 424.940625, 424.946875, 424.953125, 424.959375, 424.965625, 424.971875, 424.978125, 424.984375, 424.990625, 424.996875, 425.003125, 425.009375, 425.015625, 425.021875, 425.028125, 425.034375, 425.040625, 425.046875, 425.053125, 425.059375, 425.065625, 425.071875, 425.078125, 425.084375, 425.090625, 425.096875, 425.103125, 425.109375

See § 88.309 for interservice sharing rules.

§ 88.777 Location limitations in the 421-430 MHz band.

(a) **Base or control stations** must be located **within 30 miles** of the center of Buffalo or **50 miles** of the center of Detroit. In Cleveland, base or control stations will be allowed at locations north of line A that are within 30 miles of the city center. In addition, low power (2 watts or less) base stations may locate within 50 miles of the center of Buffalo. See § 88.7 for the coordinates of the centers of these areas.

(b) **Mobile operation** must be confined to within 50 miles of the centers of Detroit, Cleveland, or Buffalo.

§ 88.781 Authorization in the 470-512 MHz band (UHF-TV Sharing)

Sections 88.781-88.791 govern the authorization and use of frequencies by land mobile stations in the band 470-512 MHz on a geographically shared basis with Television Broadcast stations. Under this special sharing plan, different radio services are allocated different specific frequencies in this band depending on the geographic urban area involved. See § 88.429(j) for the special protection criteria for these frequencies, and § 88.293 for the frequency loading criteria.

§ 88.783 Geographic availability of frequencies.

Base station frequencies in the band 470-512 MHz are available for assignment in the urbanized areas listed below. Assignable frequencies occur in increments of 6.25 kHz. The separation between base and mobile transmit frequencies is 3 MHz for two frequency operations. Adjacent channel pairs may be combined to form wideband channels provided that the spectrum efficiency standard is met.

Urbanized area	Channel	Frequencies (megahertz)
Boston, Mass	14	470.303125-472.996875
	16	482.303125-485.996875
Chicago, Ill.<1>	14	470.303125-472.996875
	15	476.303125-479.996875
Cleveland, Ohio<2>	14	470.303125-472.996875
	15	476.303125-479.996875
Dallas/Fort Worth, TX	16	482.303125-485.996875
Detroit, Mich.<3>	15	476.303125-479.996875
	16	482.303125-485.996875
Houston, Tex	17	488.303125-491.996875
Los Angeles, Calif	14	470.303125-472.996875
	16	482.003125-484.996875
	20	506.303125-509.996875
Miami, Fla	14	470.303125-472.996875
New York/N.E. N.J	14	470.303125-472.996875
	15	476.303125-479.996875
Philadelphia, Pa	19	500.303125-503.996875
	20	506.303125-509.996875
Pittsburgh, Pa	14	470.303125-472.996875
	18	494.303125-497.996875
San Francisco/Oakland, CA	16	482.303125-485.996875
	17	488.303125-491.996875
Wash., D.C./Md./Va	17	488.303125-491.996875
	18	494.303125-497.996875

See § 88.1601 for the geographic centers of these urbanized areas.

<1>In the Chicago, Ill., urbanized area, channel 15 frequencies may be used for paging operations in addition to low power base/mobile usages, where applicable protection requirements for ultrahigh frequency television stations are met.

<2>Channels 14 and 15 are not available in Cleveland, Ohio, until further order from the Commission.

<3> Channels 15 and 16 are not available in Detroit, Mich., until further order from the Commission.

§ 88.785 Eligibility for the 470-512 MHz band.

Except for Channel 16, which is available in Los Angeles for use by public safety users, all frequencies are available in the General Category Pool.

§ 88.787 Location of 470-512 MHz stations.

(a) The transmitter site(s) for **base station(s)**, including mobile relay stations, must be located **not more than 80 km.** (50 mi.) from the geographic center of the urbanized area listed in § 88.783.

(b) **Mobile units** must be operated within 48 km. (30 mi.) of their associated base station or stations. Such units may not be operated aboard aircraft in flight.

(c) **Control stations** must be located within the area of operation of the mobile units.

(d) Base and control stations must be located a **minimum of 1.6 km. (1 mi.) from local television stations** operating on UHF TV channels separated by 2, 3, 4, 5, 7, and 8 TV channels from the television channel in which the base station will operate.

§ 88.791 Use of frequencies in the 476-494 MHz band in the Southern Louisiana-Texas offshore zone.

(a) The frequency bands from 490-491 and 493-494 MHz will be available for assignment to stations governed by this part within **Zone A**. The boundaries of Zone A are from longitude 87°45′ on the east to longitude 94°00′ on the west, and from the three mile limit along the Gulf of Mexico shoreline on the north to the limit of the Outer Continental Shelf on the south. The frequency bands from 484-485 and 476-488 MHz will be available for assignment to stations governed by this part within **Zone B**. The boundaries of Zone B are from longitude 87°45′ on the east to longitude 95°00′ on the west and from the 3-mile limit along the Gulf of Mexico shoreline on the north to the limit of the Outer Continental Shelf on the south. The frequency bands from 478-479 and 481-481 MHz will be available for assignment to stations governed by this part within **Zone C**. The boundaries of Zone C are from longitude 94°00′ on the east, the 3-mile limit on the north and west, a 282 km (175 mi) radius from the reference point at Linares, N.L., Mexico on the southwest, latitude 26°00′ on the south, and the limits of the Outer Continental Shelf on the southeast. These frequencies may also be assigned to fixed stations located on shore designed to provide communications service within the zone.

(b) **Offshore** base/mobile, and offshore and shore fixed stations may be authorized.

(c) F2, F3, F4, F9, and A2, A3, A4, and A9 **emissions** may be authorized.

(d) Offshore stations must **protect cochannel TV stations** on Channels 15, 16 and 17. Station operating parameters shall be in accordance with the values given in Table D-1 of this section.

Table D-1

Protection of Cochannel Television Stations by Offshore Stations Operating in the Southern Louisiana-Texas Offshore Zone (65 dB Protection); Maximum ERP (in Watts)

Distance from transmitter to co-channel TV station in km (mi)	Antenna height above sea level meters (ft)		
	31(100)	46(150)	61(200)
338(210)	1,000	1,000	1,000
330(205)	1,000	900	800
322(200)	800	710	630
314(195)	590	520	450
306(190)	450	400	330
298(185)	320	280	240
290(180)	250	210	175
282(175)	175	150	130
274(170)	130	110	100
265(165)	95	80	70
257(160)	65	55	50
249(155)	50	40	35
241(150)	35	30	25

Note:-To determine the maximum permissible effective radiated power:

(1) As specified in § 73.611 of this chapter, determine the distance between the proposed station and the cochannel television station. If the exact mileage does not appear in Table D-1 of this section, the next lower mileage separation is to be used.

(2) Opposite this mileage figure ERPs are given that may be used for antenna heights of 31, 46, and 61 meters (100, 150, or 200 ft) ASL. If the exact antenna height is not shown, the ERP allowed will be that shown for the next higher antenna height.

(e) Shore stations communicating point-to-point with offshore stations will be permitted at least the same **ERP** as the offshore station, but only in the direction of the offshore station. A directional antenna must be used and the rearward radiated power from the antenna in a sector ±22 1/2° from the line joining the shore antenna to the cochannel television station must not exceed those shown in Table D-2 of this section.

Table D-2

Maximum Rearward Effective Radiated Power Allowed for Shore Stations; Rearward Effective Radiated Power (in Watts) From Shore Antenna in a Sector ± 22 1/2° From the Line Joining the Shore Antenna to the Cochannel Television Station

Distance from transmitter to cochannel television station in km (mi)	Antenna height above ground meters (ft)					
	31 (100)	46 (150)	61 (200)	91 (300)	152 (500)	229 (750)
298(185)	320	280	240	190	125	90
290(180)	250	210	175	125	100	60
282(175)	175	150	130	100	70	50
274(170)	130	110	100	75	40	35
265(165)	95	82	70	50	35	25
257(160)	65	55	50	40	25	20
249(155)	50	40	35	30	20	15
241(150)	35	30	25	20	15	10
233(145)	25	20	18	15	10	7
225(140)	18	15	13	10	7	5
217(135)	13	10	9	7	5	3
209(130)	10	8	6	5	3	2
201(125)	7	6	5	4	3	2
193(120)	5	4	3	3	2	1

Note: As an example of the use of Tables D-1 and D-2, assume an offshore station located 290 km (180 mi) from TV Channel 17 located in Bude, Miss. with an antenna height of 31 m (100 ft). Table D-1 allows this station to operate with 250 W ERP. Now assume the shore station communicating with the offshore station is 48 km (30 mi) from the offshore station and 241 km (150 mi) from Bude, Miss. The shore station antenna height is 152 m (500 ft) above ground. The shore station will be allowed the same ERP as the offshore station (250 W) in the direction of the offshore station. Table D-2 indicates that the effective radiated power in a sector ±22 1/2° from the line joining the shore antenna to Bude, Miss. can only be 15 W. Consequently, a directional antenna must be used whose minimum front-to-back ratio over this 45° sector must be at least 12.2 dB. (250 W forward power to 15 W rearward power is a power ratio of 16.6 or 12.2 dB).

(f) To **protect cochannel television stations**, no shore station will be allowed closer than 193 km (120 mi) from the cochannel television station.

(g) To **protect adjacent channel television stations**, no shore or offshore station will be allowed within an 129 km (80 mi) distance of the adjacent channel television station.

(h) **Mobile stations** must not operate closer to shore than 6.4 km (4 mi) beyond the three mile limit nor operate with an ERP in excess of 100 watts with 9.1 m (30 ft) maximum antenna height.

(i) **Mobile stations installed in aircraft** must operate 11.3 km (7 mi) beyond the three mile limit and must not operate with an ERP in excess of 1 watt or at heights in excess of 305 km (1000 ft) AMSL.

(j) The following **frequencies are available for assignment** in all services for use in the Zones as defined in paragraph (a) of this section.

Table D-3

Paired Frequencies (Megahertz)		
Zone	Transmit (or receive)	Receive (or transmit)
A	490.128125-490.981875	493.128125-493.981875
B	484.128125-484.981875	487.128125-487.981875
C	478.128125-478.981875	481.128125-481.981875

Assignable frequency pairs occur in increments of 6.25 kHz. Multiple channel channel assignments in accordance with the spectrum efficiency standard are permitted. See § 88.433.

(k) **Fixed stations** operating point-to-point will be assigned frequencies beginning with 490.128125/493.128125 MHz (Zone A), 484.128125/487.128125 MHz (Zone B) and 478.128125/478.128125 MHz (Zone C) and progressing upwards utilizing available frequencies toward the end of the band. Offshore base/mobile stations will be assigned frequencies beginning at 490.981875/493.981875 MHz (Zone A), 484.981875/487.981875 MHz (Zone B) and 478.981875/481.981875 MHz (Zone C) and progressing downwards utilizing available frequencies toward the beginning of the band.

(l) Stations located east of 92° W longitude in the Southern Louisiana Offshore Zone may be authorized frequencies that are **offset by 12.5 kHz** from regularly assigned Zone A frequencies (490-491 and 493-494 MHz). Such assignments will be on a secondary, non-interference basis to primary authorized stations and will be entitled to protection from these stations.

§ 88.801 U.S./Mexican border area.

The channels in the 806-821/851-866 MHz band available 110 kilometers (68.4 miles) or less from the U.S./Mexico border are offset 12.5 kHz lower in frequency than those specified in §§ 88.613-88.625. Paired base station frequencies will be 45 MHz higher in frequency than mobile frequencies. Stations located on Mt. Lemmon, serving the Tucson, AZ area, will only be

authorized offset frequencies. The frequencies 896-901/935-940 MHz are not available for assignment in the U.S./Mexico Border area.

(a) **Public Safety Radio Service, 806-821/851-866 MHz Band.** The following 85 frequencies are available in the U.S./Mexican border area:

856.025, 856.050, 856.075, 856.100, 856.125, 856.150, 856.175, 856.200, 856.225, 856.250, 857.000, 857.025, 857.050, 857.075, 857.100, 857.125, 857.150, 857.175, 857.200, 857.225, 857.250, 858.000, 858.025, 858.050, 858.075, 858.100, 858.125, 858.150, 858.175, 858.200, 858.225, 858.250, 859.000, 859.025, 859.050, 859.075, 859.100, 859.125, 859.150, 859.175, 859.200, 859.225, 859.250, 860.000, 860.025, 860.050, 860.075, 860.100, 860.125, 860.150, 860.175, 860.200, 860.225, 860.250, 861.000, 861.050, 861.100, 861.150, 861.200, 861.250, 862.000, 862.050, 862.100, 862.150, 862.200, 862.250, 863.000, 863.050, 863.100, 863.150, 863.200, 863.250, 864.000, 864.050, 864.100, 864.150, 864.200, 864.250, 865.000, 865.050, 865.100, 865.150, 865.200, 865.250

The frequencies 857.000, 858.000, 859.000, 860.000 are available for conventional use only. Also see § 88.837 for National Public Safety Plan frequencies.

(b) **Non-Commercial Radio Service, 806-821/851-866 MHz Band.** The following 60 frequencies are available in the U.S./Mexican border area:

856.275, 856.300, 856.325, 856.350, 856.375, 856.400, 856.425, 856.450, 857.275, 857.300, 857.325, 857.350, 857.375, 857.400, 857.425, 857.450, 858.275, 858.300, 858.325, 858.350, 858.375, 858.400, 858.425, 858.450, 859.275, 859.300, 859.325, 859.350, 859.375, 859.400, 859.425, 859.450, 860.275, 860.300, 860.325, 860.350, 860.375, 860.400, 860.425, 860.450, 861.300, 861.350, 861.400, 861.450, 862.300, 862.350, 862.400, 862.450, 863.300, 863.350, 863.400, 863.450, 864.300, 864.350, 864.400, 864.450, 865.300, 865.350, 865.400, 865.450

(c) **SMR Service, 806-821/851-866 MHz Band.** The following 95 frequencies are available in the U.S./Mexican border area:

856.675, 856.700, 856.725, 856.750, 856.775, 856.800, 856.825, 856.850, 856.875, 856.900, 856.925, 856.950, 856.975, 857.675, 857.700, 857.725, 857.750, 857.775, 857.800, 857.825, 857.850, 857.875, 857.900, 857.925, 857.950, 857.975, 858.675, 858.700, 858.725, 858.750, 858.775, 858.800, 858.825, 858.850, 858.875, 858.900, 858.925, 858.950, 858.975, 859.675, 859.700, 859.725, 859.750, 859.775, 859.800, 859.825, 859.850, 859.875, 859.900, 859.925, 859.950, 859.975, 860.675, 860.700, 860.725, 860.750, 860.775, 860.800, 860.825, 860.850, 860.875, 860.900, 860.925, 860.950, 860.975, 861.700, 861.750, 861.800, 861.850, 861.900, 861.950, 862.700, 862.750, 862.800, 862.850, 862.900, 862.950, 863.700, 863.750, 863.800, 863.850, 863.900, 863.950, 864.700, 864.750, 864.800, 864.850, 864.900, 864.950, 865.700, 865.750, 865.800, 865.850, 865.900, 865.950

(d) **General Pool, 806-821/851-866 MHz Band.** The following 60 frequencies are available in the U.S./Mexican border area:

856.475, 856.500, 856.525, 856.550, 856.575, 856.600, 856.625, 856.650,
857.475, 857.500, 857.525, 857.550, 857.575, 857.600, 857.625, 857.650,
858.475, 858.500, 858.525, 858.550, 858.575, 858.600, 858.625, 858.650,
859.475, 859.500, 859.525, 859.550, 859.575, 859.600, 859.625, 859.650,
860.475, 860.500, 860.525, 860.550, 860.575, 860.600, 860.625, 860.650,
861.500, 861.550, 861.600, 861.650, 862.500, 862.550, 862.600, 862.650,
863.500, 863.550, 863.600, 863.650, 864.500, 864.550, 864.600, 864.650,
865.500, 865.550, 865.600, 865.650

§ 88.811 U.S./Canadian border area.

(a) For the allotment of the 806-821/851-866 MHz band, the U.S./Canada border area is divided into the following **eight geographic regions**:

Region	Location (longitude)
1	66° W-71° W (0-100 km from border)
2	71° W-81° W (0-100 km from border)
3	81° W-85° W (0-100 km from border)
4	85° W-121° 30' W (0-100 km from border)
5	121°-30' W 127° W (0-140 km from border)
6	127° W-143° W (0-100 km from border)
7	66° W-121° 30' W (100-140 km from border)
8	127° W-143° W (100-140 km from border)

(b) For the allotment of the 896-901/935-940 MHz band, the U.S./Canada border area is divided into the following **eight geographic regions**:

Region	Location (longitude)
1	66° W-71° W (0-100 km from border)
2	71° W-80° 30'W (0-100 km from border)
3	80° 30' W-85° W (0-100 km from border)
4	85° W-121° 30' W (0-100 km from border)
5	121°-30' W 127° W (0-140 km from border)
6	127° W-143° W (0-100 km from border)
7	66° W-121° 30' W (100-140 km from border)
8	127° W-143° W (100-140 km from border)

For assignments in the 896-901/935-940 MHz bands, the cities of Akron, Ohio (41°05'00"N, 81°30'40"W) and Youngstown, Ohio (41°05'57"N, 80°39'02"W) are considered outside of Region 3, and Syracuse, New York (43°03'04"N, 76°09'14"W) is considered outside of Region 2. These cities are defined as an area with the given center coordinates and encompassing a circle of 30 km radius.

§ 88.813 Available frequencies in U.S./Canadian border area.

(a) The frequencies 851-866 MHz listed in paragraphs (c)-(f) of this section are available (together with the paired frequencies 45 MHz lower) in each Region except that **no authorizations** will be made **in the frequency bands in the geographic areas** listed below:

Frequency bands (MHz)	Areas
852-856.25	Between 42°30'N and 43°30'N and within 10 km of the border, and West of 82° W.
852-853.25	Between 43°N and 43'20'N and within 10 km of the border, and East of 80° W.
864-866	Between 42°55'N and 43°20'N and within 15 km of the border, and East of 81° W.
851-852	Between 74°20'W and 72°55'W and within 10 km of the border.
852-853.25	Between 75°20'W and 74°05'W and within 10 km of the border.
864-866	Between 75°30'W and 74°55'W and within 10 km of the border.
851-852	Between 72°10'W and 71°25'W and within 10 km of the border.
852-854.75	Within 10 km of the border West of 121°55'W longitude and North of 48°25'N latitude, excluding the Alaska-British Columbia/Yukon Territory border.

(b) The frequencies 935-940 MHz listed in paragraphs (c)-(f) are **available** (together with the paired frequencies 39 MHz lower) **in each Region** as shown below. Additionally, the frequencies 935.8875, 935.9375, 935.9875, 936.8875, 936.9375, and 936.9875 are available in all regions only for implementation of an **Advanced Train Control System** as defined in 3 FCC Rcd 427 (1988) (Advanced Train Control Waiver).

(c) **Regions 1, 4, 5 and 6.**

(1) **Public Safety Radio Service.** The following 85 frequencies are available in Regions 1, 4, 5 and 6 of the U.S./Canadian border area:

851.0125 - 851.4125, 851.7625 - 852.1625, 852.5125 - 852.9125, 853.2625 - 853.6625, 854.0125 - 854.4125

(2) **Non-Commercial Radio Service.** The following 60 frequencies in the 851-866 MHz band and 52 frequencies in the 935-940 MHz band are available in Regions 1, 4, 5 and 6 of the U.S./Canadian border area:

851.4375 - 852.1875, 852.2125 - 852.4625, 852.9375 - 853.2125, 853.6875 - 853.9625, 854.4375 - 854.7125, 935.3875 - 935.5000, 935.8875 - 936.0000, 936.3875 - 936.5000, 936.8875 - 937.0000, 937.3875 - 937.5000, 939.9750 - 939.9875

(3) **SMR Service.** The following 95 frequencies in the 851-866 MHz band and 100 frequencies in the 935-940 MHz band are available in Regions 1, 4, 5 and 6 of the U.S./Canadian border area:

851.7375, 852.4875, 853.2375, 853.9875, 854.7375, 862.5625 - 862.9875, 863.3125 - 863.7375, 864.0625 - 864.4875, 864.8125 - 865.2375, 865.5625 - 865.9875, 935.0125 - 935.1250, 935.2625 - 935.3750, 935.5125 - 935.6250, 935.7625 - 935.8750, 936.0125 - 936.1250, 936.2625 - 936.3750, 936.5125 - 936.6250, 936.7625 - 936.8750, 937.0125 - 937.1250, 937.2625 - 937.3750

(4) **General Pool.** The following 60 frequencies in the 851-866 MHz band and 50 frequencies in the 935-940 MHz band are available in Regions 1, 4, 5 and 6 of the U.S./Canadian border area:

862.2625 - 862.5375, 863.0125 - 863.2875, 863.7625 - 864.0375, 864.5125 - 864.7875, 865.2625 - 865.5375, 935.1375 - 935.2500, 935.6375 - 935.7500, 936.1375 - 936.2500, 936.6375 - 936.7500, 937.1375 - 937.2500

(d) **Region 2.**

(1) **Public Safety Radio Service.** The following 50 frequencies are available in Region 2 of the U.S./Canadian border area:

851.0125 - 851.2375, 851.4625 - 851.6875, 851.9125 - 852.1375, 852.3625 - 852.5875, 852.8125 - 853.0375

(2) **Non-Commercial Radio Service.** The following 35 frequencies in the 851-866 MHz band and 30 frequencies in the 935-940 MHz band are available in Region 2 of the U.S./Canadian border area:

851.2625 - 851.4125, 851.7125 - 851.8625, 852.1625 - 852.3125, 852.6125 - 852.7625, 853.0625 - 853.2125, 935.3875 - 935.5000, 935.8875 - 936.0000, 936.3875 - 936.5000

(3) **SMR Service.** The following 60 frequencies in the 851-866 MHz band and 60 frequencies in the 935-940 MHz band are available in Region 2 of the U.S./Canadian border area:

851.4375, 851.8875, 852.3375, 852.7875, 853.2375, 863.9375 - 864.1875, 864.3875 - 864.6375, 864.8375 - 865.0875, 865.2875 - 865.5375, 865.7375 - 865.9875, 935.0125 - 935.1250, 935.2625 - 935.3750, 935.5125 - 935.6250, 935.7625 - 935.8750, 936.0125 - 936.1250, 936.2625 - 936.3750

(4) **General Pool.** The following 35 frequencies in the 851-866 MHz band and 30 frequencies in the 935-940 MHz band are available in Region 2 of the U.S./Canadian border area:

863.7625 - 863.9125, 864.2125 - 864.3625, 864.6625 - 864.8125,
865.1125 - 865.2625, 865.5625 - 865.7125, 935.1375 - 935.2500,
935.6375 - 935.7500, 936.1375 - 936.2500

(e) **Region 3.**

(1) **Public Safety Radio Service.** The following 115 frequencies are available in Region 3 of the U.S./Canadian border area:

851.0125 - 851.5375, 852.0125 - 852.5375, 853.0125 - 853.5375,
854.0125 - 854.5375, 855.0125 - 855.5375, 856.0125 - 856.1125

(2) **Non-Commercial Radio Service.** The following 85 frequencies in the 851-866 MHz band and 80 frequencies in the 935-940 MHz band are available in Region 3 of the U.S./Canadian border area:

851.5625 - 851.9125, 852.5625 - 852.9125, 853.5625 - 853.9125,
854.5625 - 854.9125, 855.5625 - 855.9125, 860.7625 - 860.9875,
935.3875 - 935.5000, 935.8875 - 936.0000, 936.3875 - 936.5000,
936.8875 - 937.0000, 937.3875 - 937.5000, 937.8875 - 938.0000,
938.3875 - 938.5000, 938.8875 - 939.0000

(3) **SMR Service.** The following 135 frequencies in the 851-866 MHz band and 170 frequencies in the 935-940 MHz band are available in Region 3 of the U.S./Canadian border area:

851.9375 - 855.9875, 861.4125 - 861.9875, 862.4125 - 862.9875,
863.4125 - 863.9875, 864.4125 - 864.9875, 865.4125 - 865.9875,
935.0125 - 935.1250, 935.2625 - 935.3750, 935.5125 - 935.6250,
935.7625 - 935.8750, 936.0125 - 936.1250, 936.2625 - 936.3750,
936.5125 - 936.6250, 936.7625 - 936.8750, 937.0125 - 937.1250,
937.2625 - 937.3750, 937.5125 - 937.6250, 937.7625 - 937.8750,
938.0125 - 938.1250, 938.2625 - 938.3750, 938.5125 - 938.6250,
938.7625 - 938.8750, 939.0125 - 939.1250

(4) **General Pool.** The following 85 frequencies in the 851-866 MHz band and 90 frequencies in the 935-940 MHz band are available in Region 3 of the U.S./Canadian border area:

856.1375 - 856.2375, 861.0125 - 861.3875, 862.0125 - 862.3875,
863.0125 - 863.3875, 864.0125 - 864.3875, 865.0125 - 865.3875,
935.1375 - 935.2500, 935.6375 - 935.7500, 936.1375 - 936.2500,
936.6375 - 936.7500, 937.1375 - 937.2500, 937.6375 - 937.7500,
938.1375 - 938.2500, 938.6375 - 938.7500, 939.1375 - 939.2500

(f) **Regions 7 and 8.**

(1) **Public Safety Radio Service.** The following 170 frequencies are available in Regions 7 and 8 of the U.S./Canadian border area:

851.0125 - 852.0125, 852.0375 - 852.8375, 853.0125 - 854.0125, 854.0375 - 854.8375, 855.0125 - 855.8375

(2) **Non-Commercial Radio Service.** The following 120 frequencies in the 851-866 MHz band and 99 frequencies in the 935-940 MHz band are available in Regions 7 and 8 of the U.S./Canadian border area:

856.0125 - 856.5875, 857.0125 - 857.5875, 858.0125 - 858.5875, 859.0125 - 859.5875, 860.0125 - 860.5875, 935.3875 - 935.5000, 935.8875 - 936.0000, 936.3875 - 936.5000, 936.8875 - 937.0000, 937.3875 - 937.5000, 937.8875 - 938.0000, 938.3875 - 938.5000, 938.8875 - 939.0000, 939.3875 - 939.5000, 939.8875 - 939.9875

(3) **SMR Service.** The following 190 frequencies in the 851-866 MHz band and 200 frequencies in the 935-940 MHz band are available in Regions 7 and 8 of the U.S./Canadian border area:

851.8625 - 851.9875, 852.8625 - 852.9875, 853.8625 - 853.9875, 854.8625 - 854.9875, 855.8625 - 855.9875, 856.6125 - 856.9875, 857.6125 - 857.9875, 858.6125 - 858.9875, 859.6125 - 859.9875, 860.6125 - 860.9875, 861.6125 - 861.9875, 862.6125 - 862.9875, 863.6125 - 863.9875, 864.6125 - 864.9875, 865.6125 - 865.9875, 935.0125 - 935.1250, 935.2625 - 935.3750, 935.5125 - 935.6250, 935.7625 - 935.8750, 936.0125 - 936.1250, 936.2625 - 936.3750, 936.5125 - 936.6250, 936.7625 - 936.8750, 937.0125 - 937.1250, 937.2625 - 937.3750, 937.5125 - 937.6250, 937.7625 - 937.8750, 938.0125 - 938.1250, 938.2625 - 938.3750, 938.5125 - 938.6250, 938.7625 - 938.8750, 939.0125 - 939.1250, 939.2625 - 939.3750, 939.5125 - 939.6250, 939.7625 - 939.8750

(4) **General Pool.** The following 120 frequencies in the 851-866 MHz band and 100 frequencies in the 935-940 MHz band are available in Regions 7 and 8 of the U.S./Canadian border area:

861.0125 - 861.5875, 862.0125 - 862.5875, 863.0125 - 863.5875, 864.0125 - 864.5875, 865.0125 - 865.5875, 935.1375 - 935.2500, 935.6375 - 935.7500, 936.1375 - 936.2500, 936.6375 - 936.7500, 937.1375 - 937.2500, 937.6375 - 937.7500, 938.1375 - 938.2500, 938.6375 - 938.7500, 939.1375 - 939.2500, 939.6375 - 939.7500

§ 88.815 Coordination with Canada.

Coordination with Canada will be required:

(a) For frequencies in the 808.2625-809.7375/853.2625-854.7375 MHz and 817.2625-818.7375/862.2625-863.7375 MHz bands, for stations to be located in

the geographical area in **Region 1** enclosed by the United States border, the meridian 71° W and the line beginning at the intersection of 44°25'N, 71° W, then running by great circle arc to the intersection of 45° N, 70° W, then North along meridian 70° W to the intersection of 45°45'N, then running West along 45°45'N to the intersection of the United States--Canada border.

(b) For frequencies in the 808.2625-811.2375/853.2625-856.2375 MHz and 815.7625-818.7375/860.7625-863.7375 MHz bands, for stations to be located in the geographical area in **Region 3** enclosed by the meridian 81° W longitude, the arc of a circle of 100 km radius centered at the intersection of 81° W longitude and the northern shore of Lake Erie and drawn clockwise from the southerly intersection with 81° W longitude to intersect the United States-Canada border, and the United States-Canada border.

§ 88.817 Power/antenna height restrictions in U.S./Canadian border area.

Station authorizations in Regions 1-4 and Regions 6-8 for the 806-821/851-866 MHz and 896-901/935-940 MHz bands will be subject to Effective Radiated Power (ERP) and Effective Antenna Height (EAH) limitations as indicated in Table D-4. Stations in Region 5 will be subject to the ERP and antenna height above mean sea level limitations in Table D-5. Effective Radiated Power (ERP) is defined as the product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction. Effective Antenna Height is calculated by subtracting the Assumed Average Terrain Elevation (AATE) given in Table D-6 from the antenna height above mean sea level.

Table D-4

Limits of Effective Radiated Power (ERP) Corresponding to Effective Antenna Heights (EAH) of Base Stations in Regions 1 - 4, 6 - 8

Meters	Feet	Watts (maximum)
0-152	0-500	500
153-305	501-1000	125
306-457	1001-1500	40
458-609	1501-2000	20
610-762	2001-2500	10
763-914	2501-3000	10
915-1066	3001-3500	6
1067-1219	3501-4000	5
Above 1219	Above 4000	5

Table D-5

Limits of Effective Radiated Power (ERP) Corresponding to Antenna Heights Above Mean Sea Level of Base Stations in Region 5		
Antenna height above mean sea level		ERP watts (maximum)
Meters	Feet	
0 to 503	0 to 1,650	500
504 to 609	1,651 to 2,000	350
610 to 762	2,001 to 2,500	200
763 to 914	2,501 to 3,000	140
915 to 1,066	3,001 to 3,500	100
1,067 to 219	3,501 to 4,000	75
1,220 to 1,371	4,001 to 4,500	70
1,372 to 1,523	4,501 to 5,000	65
Above 1,523	Above 5,000	5

Table D-6

Values of Assumed Average Terrain Elevation (AATE) Along the U.S./Canada Border

Longitude (ϕ) (°West)	Latitude (θ) (°North)	Assumed Average Terrain Elevation	
		Meters	Feet
$65 \leq \phi < 69$	$\theta < 45$	0	0
$65 \leq \phi < 69$	$45 \leq \theta < 46$	91	300
$65 \leq \phi < 69$	$\theta \geq 46$	305	1000
$69 \leq \phi < 73$	ALL	609	2000
$73 \leq \phi < 74$	ALL	152	500
$74 \leq \phi < 78$	ALL	76	250
$78 \leq \phi < 80$	$\theta < 43$	76	250
$78 \leq \phi < 80$	$\theta \geq 43$	152	500
$80 \leq \phi < 90$	ALL	183	600
$90 \leq \phi < 98$	ALL	305	1000
$98 \leq \phi < 102$	ALL	457	1500
$102 \leq \phi < 108$	ALL	762	2500
$108 \leq \phi < 111$	ALL	1066	3500
$111 \leq \phi < 113$	ALL	1219	4000
$113 \leq \phi < 114$	ALL	1524	5000
$114 \leq \phi < 121.5$	ALL	914	3000
$121.5 \leq \phi < 127$	ALL	0	0
$\phi \geq 127$	$54 \leq \theta < 56$	0	0
$\phi \geq 127$	$56 \leq \theta < 58$	152	500
$\phi \geq 127$	$58 \leq \theta < 60$	0	0
*	$60 \leq \theta < 62$	1219	4000
*	$62 \leq \theta < 64$	488	1600
*	$64 \leq \theta < 66$	305	1000
*	$66 \leq \theta < 68$	228	750
*	$68 \leq \theta < 69.5$	457	1500
*	$\theta \geq 69.5$	0	0

*Alaska - British Columbia/Yukon Territory Border

§ 88.819 Protection of Canadian television stations.

Two Canadian television stations provide service in British Columbia in the band 806-890 MHz in accordance with U.S./Canadian Television Agreement of 1952. They are:

Enderby, B.C.	Channel 72	818-824 MHz.
Radium/Hot Springs, B.C	Channel 77	848-854 MHz.

Until reassignment of these stations, they must be protected as follows: the field strength of an interfering mobile radio signal at the station's calculated B contour (where the protected contour crosses the border, that

portion of the border lying within the contour shall be treated as the relevant segment of the B contour) may not exceed 14 dBu for frequencies co-channel with the television channel utilized, and may not exceed 54 dBu in the two adjacent 6 MHz guard bands. The field strength of any interfering signal must be calculated using the FCC Report R-6602 F(50,10) propagation curves at a receiving effective antenna height of 30 feet (9.1 meters).

§ 88.821 Restricted use of 896-901/935-940 MHz in part of Region 1.

Channel assignments for stations to be located in the geographic area in Region 1 enclosed by the United States-Canada border, 71° W longitude and the line beginning at the intersection of 44°25'N, 71° W, then running by great circle arc to the intersection of 45° N, 70° W, then North along 70° W longitude to the intersection of 45°45'N, then running West along 45°45'N to the intersection of the United States--Canada border, will be only for 936.5125-937.0000 MHz, and will be limited to assignments with 11 kHz or less necessary bandwidth. Coordination with Canada will be required for these channels.

§ 88.823 Restricted use of 896-901/935-940 MHz in part of Region 3.

Channel assignments for stations to be located in the geographic area in Region 3 enclosed by 81W longitude, the arc of a circle of 100 km radius centered at 42°39'30"N latitude and 81°W longitude at the northern shore of Lake Erie and drawn clockwise from the southerly intersection with 80°30'W longitude to intersect the United States-Canada border West of 81°W, and the United States-Canada border, will be only for 936.5125-937.8750 MHz, and will be limited to assignments with 11 kHz or less necessary bandwidth. Coordination with Canada will be required for these channels. U.S. stations must protect Canadian stations operating on 936.5125-937.8750 MHz within an area of 30 km radius from the center city coordinates of London, Ontario (42° 59' N, 81° 14' W).

§ 88.825 Additional frequencies in Region 5.

In Region 5, the frequencies 937.5125-939.9625 MHz may be authorized in the United States under the following conditions:

(a) An assignment may be made if the predicted power flux density (PFD) of a proposed station's **signal does not exceed -107 dBW/m2 at the border**. The prediction of the PFD is calculated based upon a modified Longley-Rice point-to-point propagation model with time and location variabilities of 10 percent[1] and 3-second digitized terrain data[2].

(b) Authorizations for frequencies 937.5125-939.9625 MHz in Region 5 are **secondary to Canadian operations** and conditioned to require that licensees take immediate action to eliminate any harmful interference resulting from the station's transmitted signal exceeding -107 dBW/m2 at or beyond the U.S./Canada border.

[1] G.A. Hufford, A.G. Longley, and W.A. Kissick, A guide to the use of the ITS irregular terrain model in the area prediction mode, NTIA Report 82-100. (Available from U.S. Department of Commerce, National Technical and Information Service (NTIS), Springfield, VA 22161. Accession number PB-217977.)

A.G. Longley and P.L. Rice, Prediction of tropospheric radio transmission loss over irregular terrain - a computer method 1968, ESSA Technical Report ERL 79-ITS 67. (Available from NTIS, Accession number AD-676-874.)

P.L. Rice, A.G. Longley, K.A. Norton, and A.P. Barsis, Transmission loss predictions for tropospheric communication circuits, National Bureau of standards Technical Note 101, Volumes I and II. (Available from NTIS, Accession numbers AD-687-820 and AD-687-821.)

[2] Level 1 - Digital Terrain Elevation Data, United States Defense Mapping Agency. (Available from National Cartographic Information Center, U.S. Geological Survey, 507 National Center, Reston, VA 22092 as Digital Elevation Model Data in 10x10 units. Two of these units are required to cover each 10x20 map (1:250,000-scale quadrangle) from which the data were produced.

§ 88.827 Additional frequencies in the 896-901/935-940 MHz band.

(a) The **channels** listed in Table D-7 are available for assignment in Regions 1-6 if the maximum power flux density (PFD) of the station's transmitted signal does not exceed the limits specified in Tables D-8 and D-9. The spreading loss must be calculated using the free space formula taking into account any antenna discrimination in the direction of the border.

Table D-7

ADDITIONAL FREQUENCIES AVAILABLE IN REGIONS 1-6		
Region	Frequencies (MHz)	Effective Radiated Power
1	937.5125-939.9625	See Table D-8
2	936.5125-939.9875	See Table D-8
3	939.2625-939.9875	See Table D-8
4	937.5125-939.9625	See Table D-8
5	937.5125-939.9625	See Table D-9
6	937.5125-939.9625	See Table D-8

(b) Authorizations for stations using these channels will be **secondary to Canadian operations** and conditioned to require that licensees take immediate action to eliminate any harmful interference resulting from the station's transmitted signal exceeding the values specified in Tables D-8 or D-9 at or beyond the U.S./Canada border.

TABLE D-8

MAXIMUM POWER FLUX DENSITY (PFD) AT THE U.S./CANADA BORDER CORRESPONDING TO EFFECTIVE ANTENNA HEIGHT (REGIONS 1-4, 6)		
Effective Antenna Height (EAH) Feet	Meters	PFD dBW/m2
0-500	0-152	-84
501-1000	153-305	-90
1001-1500	306-457	-95
1501-2000	458-609	-98
2001-2500	610-762	-101
2500-3000	763-914	-101
3001-3500	915-1066	-103
3501-4000	1067-1219	-104
Above 4000	Above 1219	-104

TABLE D-9

MAXIMUM POWER FLUX DENSITY (PFD) AT THE U.S./CANADA BORDER CORRESPONDING TO ANTENNA HEIGHT ABOVE MEAN SEA LEVEL (REGION 5)		
Antenna Height Above Mean Sea Level		PFD
Feet	Meters	dBW/m2
0-1650	0-503	-87
1651-2000	504-609	-88.5
2001-2500	610-762	-91
2501-3000	763-914	-92.5
3001-3500	915-1066	-94
3501-4000	1067-1219	-95
4001-4500	1220-1371	-95.5
4501-5000	1372-1523	-96
Above 5000	Above 1523	-107

PUBLIC SAFETY 821-824/866-869 MHZ

§ 88.831 Public Safety National Plan.

The Commission has established a National Plan that specifies special policies and procedures governing the Public Safety Radio Service. The National Plan is contained in the Report and Order in General Docket No. 87-112. The principal spectrum resource for the National Plan is the 821-824 MHz and the 866-869 MHz bands. The National plan establishes planning regions covering all parts of the United States, Puerto Rico, and the U.S. Virgin Islands. No assignments will be made in the 821-824 MHz and 866-869 MHz bands until a regional plan for the area has been accepted by the Commission.

§ 88.833 821-824/866-869 MHz band frequencies.

The following base station frequencies, together with the paired mobile and control station transmitting frequencies 45 MHz lower, are available for assignment:

866.0125, 866.0375, 866.0500, 866.0625, 866.0750, 866.0875, 866.1000, 866.1125, 866.1250, 866.1375, 866.1500, 866.1625, 866.1750, 866.1875, 866.2000, 866.2125, 866.2250, 866.2375, 866.2500, 866.2625, 866.2750, 866.2875, 866.3000, 866.3125, 866.3250, 866.3375, 866.3500, 866.3625, 866.3750, 866.3875, 866.4000, 866.4125, 866.4250, 866.4375, 866.4500, 866.4625, 866.4750, 866.4875, 866.5125, 866.5375, 866.5500, 866.5625, 866.5750, 866.5875, 866.6000, 866.6125, 866.6250, 866.6375, 866.6500, 866.6625, 866.6750, 866.6875, 866.7000, 866.7125, 866.7250, 866.7375, 866.7500, 866.7625, 866.7750, 866.7875, 866.8000, 866.8125, 866.8250, 866.8375, 866.8500, 866.8625, 866.8750, 866.8875, 866.9000, 866.9125, 866.9250, 866.9375, 866.9500, 866.9625, 866.9750, 866.9875, 867.0125, 867.0375, 867.0500, 867.0625, 867.0750, 867.0875, 867.1000, 867.1125,

867.1250, 867.1375, 867.1500, 867.1625, 867.1750, 867.1875, 867.2000, 867.2125, 867.2250, 867.2375, 867.2500, 867.2625, 867.2750, 867.2875, 867.3000, 867.3125, 867.3250, 867.3375, 867.3500, 867.3625, 867.3750, 867.3875, 867.4000, 867.4125, 867.4250, 867.4375, 867.4500, 867.4625, 867.4750, 867.4875, 867.5125, 867.5375, 867.5500, 867.5625, 867.5750, 867.5875, 867.6000, 867.6125, 867.6250, 867.6375, 867.6500, 867.6625, 867.6750, 867.6875, 867.7000, 867.7125, 867.7250, 867.7375, 867.7500, 867.7625, 867.7750, 867.7875, 867.8000, 867.8125, 867.8250, 867.8375, 867.8500, 867.8625, 867.8750, 867.8875, 867.9000, 867.9125, 867.9250, 867.9375, 867.9500, 867.9625, 867.9750, 867.9875, 868.0125, 868.0375, 868.0500, 868.0625, 868.0750, 868.0875, 868.1000, 868.1125, 868.1250, 868.1375, 868.1500, 868.1625, 868.1750, 868.1875, 868.2000, 868.2125, 868.2250, 868.2375, 868.2500, 868.2625, 868.2750, 868.2875, 868.3000, 868.3125, 868.3250, 868.3375, 868.3500, 868.3625, 868.3750, 868.3875, 868.4000, 868.4125, 868.4250, 868.4375, 868.4500, 868.4625, 868.4750, 868.4875, 868.5000, 868.5125, 868.5250, 868.5375, 868.5500, 868.5625, 868.5750, 868.5875, 868.6000, 868.6125, 868.6250, 868.6375, 868.6500, 868.6625, 868.6750, 868.6875, 868.7000, 868.7125, 868.7250, 868.7375, 868.7500, 868.7625, 868.7750, 868.7875, 868.8000, 868.8125, 868.8250, 868.8375, 868.8500, 868.8625, 868.8750, 868.8875, 868.9000, 868.9125, 868.9250, 868.9375, 868.9500, 868.9625, 868.9750, 868.9875

The following frequencies are available only for mutual aid purposes as defined in Gen. Docket No. 87-112; 866.0125, 866.5125, 867.0125, 867.5125 and 868.0125 MHz.

§ 88.837 821-824/866-869 MHz band frequencies in United States/Mexico border area.

(a) **Available Frequencies.** A total of 107 frequency pairs are available in the United States/Mexico border area:

Base Frequency	Mobile Frequency	Country
866.0125	821.0125	Both Countries
866.0250	821.0250	Not Available
866.0375	821.0375	U.S.
866.0500	821.0500	U.S.
866.0625	821.0625	U.S.
866.0750	821.0750	U.S.
866.0875	821.0875	U.S
866.1000	821.1000	U.S
866.1125	821.1125	U.S
866.1250	821.1250	U.S.
866.1375	821.1375	U.S.
866.1500	821.1500	Guard Channel
866.1625	821.1625	MEXICO
866.1750	821.1750	MEXICO
866.1875	821.1875	MEXICO
866.2000	821.2000	MEXICO
866.2125	821.2125	MEXICO

866.2250	821.2250	MEXICO
866.2375	821.2375	MEXICO
866.2500	821.2500	MEXICO
866.2625	821.2625	MEXICO
866.2750	821.2750	MEXICO
866.2875	821.2875	MEXICO
866.3000	821.3000	MEXICO
866.3125	821.3125	MEXICO
866.3250	821.3250	MEXICO
866.3375	821.3375	MEXICO
866.3500	821.3500	MEXICO
866.3625	821.3625	MEXICO
866.3750	821.3750	Guard Channel
866.3875	821.3875	U.S.
866.4000	821.4000	U.S.
866.4125	821.4125	U.S.
866.4250	821.4250	U.S.
866.4375	821.4375	U.S.
866.4500	821.4500	U.S.
866.4625	821.4625	U.S.
866.4750	821.4750	U.S.
866.4875	821.4875	U.S.
866.5000	821.5000	Not Available
866.5125	821.5125	Both Countries
866.5250	821.5250	Not Available
866.5375	821.5375	U.S.
866.5500	821.5500	U.S.
866.5625	821.5625	U.S.
866.5750	821.5750	U.S.
866.5875	821.5875	U.S.
866.6000	821.6000	U.S.
866.6125	821.6125	U.S.
866.6250	821.6250	U.S.
866.6375	821.6375	U.S.
866.6500	821.6500	Guard Channel
866.6625	821.6625	MEXICO
866.6750	821.6750	MEXICO
866.6875	821.6875	MEXICO
866.7000	821.7000	MEXICO
866.7125	821.7125	MEXICO
866.7250	821.7250	MEXICO
866.7375	821.7375	MEXICO
866.7500	821.7500	MEXICO
866.7625	821.7625	MEXICO
866.7750	821.7750	MEXICO
866.7875	821.7875	MEXICO
866.8000	821.8000	MEXICO
866.8125	821.8125	MEXICO
866.8250	821.8250	MEXICO
866.8375	821.8375	MEXICO
866.8500	821.8500	MEXICO
866.8625	821.8625	MEXICO

866.8750	821.8750	Guard Channel
866.8875	821.8875	U.S.
866.9000	821.9000	U.S.
866.9125	821.9125	U.S.
866.9250	821.9250	U.S.
866.9375	821.9375	U.S.
866.9500	821.9500	U.S.
866.9625	821.9625	U.S.
866.9750	821.9750	U.S.
866.9875	821.9875	U.S.
867.0000	822.0000	Not Available
867.0125	822.0125	Both Countries
867.0250	822.0250	Not Available
867.0375	822.0375	U.S.
867.0500	822.0500	U.S.
867.0625	822.0625	U.S.
867.0750	822.0750	U.S.
867.0875	822.0875	U.S.
867.1000	822.1000	U.S.
867.1125	822.1125	U.S.
867.1250	822.1250	U.S.
867.1375	822.1375	U.S.
867.1500	822.1500	Guard Channel
867.1625	822.1625	MEXICO
867.1750	822.1750	MEXICO
867.1875	822.1875	MEXICO
867.2000	822.2000	MEXICO
867.2125	822.2125	MEXICO
867.2250	822.2250	MEXICO
867.2375	822.2375	MEXICO
867.2500	822.2500	MEXICO
867.2625	822.2625	MEXICO
867.2750	822.2750	MEXICO
867.2875	822.2875	MEXICO
867.3000	822.3000	MEXICO
867.3125	822.3125	MEXICO
867.3250	822.3250	MEXICO
867.3375	822.3375	MEXICO
867.3500	822.3500	MEXICO
867.3625	822.3625	MEXICO
867.3750	822.3750	Guard Channel
867.3875	822.3875	U.S.
867.4000	822.4000	U.S.
867.4125	822.4125	U.S.
867.4250	822.4250	U.S.
867.4375	822.4375	U.S.
867.4500	822.4500	U.S.
867.4625	822.4625	U.S.
867.4750	822.4750	U.S.
867.4875	822.4875	U.S.
867.5000	822.5000	Not Available
867.5125	822.5125	Both Countries

867.5250	822.5250	Not Available
867.5375	822.5375	U.S.
867.5500	822.5500	U.S.
867.5625	822.5625	U.S.
867.5750	822.5750	U.S.
867.5875	822.5875	U.S.
867.6000	822.6000	U.S.
867.6125	822.6125	U.S.
867.6250	822.6250	U.S.
867.6375	822.6375	U.S.
867.6500	822.6500	Guard Channel
867.6625	822.6625	MEXICO
867.6750	822.6750	MEXICO
867.6875	822.6875	MEXICO
867.7000	822.7000	MEXICO
867.7125	822.7125	MEXICO
867.7250	822.7250	MEXICO
867.7375	822.7375	MEXICO
867.7500	822.7500	MEXICO
867.7625	822.7625	MEXICO
867.7750	822.7750	MEXICO
867.7875	822.7875	MEXICO
867.8000	822.8000	MEXICO
867.8125	822.8125	MEXICO
867.8250	822.8250	MEXICO
867.8375	822.8375	MEXICO
867.8500	822.8500	MEXICO
867.8625	822.8625	Guard Channel
867.8750	822.8750	U.S.
867.8875	822.8875	U.S.
867.9000	822.9000	U.S.
867.9125	822.9125	U.S.
867.9250	822.9250	U.S.
867.9375	822.9375	U.S.
867.9500	822.9500	U.S.
867.9625	822.9625	U.S.
867.9750	822.9750	U.S.
867.9875	822.9875	U.S.
868.0000	823.0000	Not Available
868.0125	823.0125	Both Countries
868.0250	823.0250	Not Available
868.0375	823.0375	U.S.
868.0500	823.0500	U.S.
868.0625	823.0625	U.S.
868.0750	823.0750	U.S.
868.0875	823.0875	U.S.
868.1000	823.1000	U.S.
868.1125	823.1125	U.S.
868.1250	823.1250	U.S.
868.1375	823.1375	U.S.
868.1500	823.1500	Guard Channel
868.1625	823.1625	MEXICO

868.1750	823.1750	MEXICO
868.1875	823.1875	MEXICO
868.2000	823.2000	MEXICO
868.2125	823.2125	MEXICO
868.2250	823.2250	MEXICO
868.2375	823.2375	MEXICO
868.2500	823.2500	MEXICO
868.2625	823.2625	MEXICO
868.2750	823.2750	MEXICO
868.2875	823.2875	MEXICO
868.3000	823.3000	MEXICO
868.3125	823.3125	MEXICO
868.3250	823.3250	MEXICO
868.3375	823.3375	MEXICO
868.3500	823.3500	MEXICO
868.3625	823.3625	Guard Channel
868.3750	823.3750	U.S.
868.3875	823.3875	U.S.
868.4000	823.4000	U.S.
868.4125	823.4125	U.S.
868.4250	823.4250	U.S.
868.4375	823.4375	U.S.
868.4500	823.4500	U.S.
868.4625	823.4625	U.S.
868.4750	823.4750	U.S.
868.4875	823.4875	U.S.
868.5000	823.5000	U.S.
868.5125	823.5125	U.S.
868.5250	823.5250	U.S.
868.5375	823.5375	U.S.
868.5500	823.5500	U.S.
868.5625	823.5625	U.S.
868.5750	823.5750	U.S.
868.5875	823.5875	U.S.
868.6000	823.6000	U.S.
868.6125	823.6125	Guard Channel
868.6250	823.6250	MEXICO
868.6375	823.6375	MEXICO
868.6500	823.6500	MEXICO
868.6625	823.6625	MEXICO
868.6750	823.6750	MEXICO
868.6875	823.6875	MEXICO
868.7000	823.7000	MEXICO
868.7125	823.7125	MEXICO
868.7250	823.7250	MEXICO
868.7375	823.7375	MEXICO
868.7500	823.7500	MEXICO
868.7625	823.7625	MEXICO
868.7750	823.7750	MEXICO
868.7875	823.7875	MEXICO
868.8000	823.8000	MEXICO
868.8125	823.8125	MEXICO

868.8250	823.8250	MEXICO
868.8375	823.8375	MEXICO
868.8500	823.8500	MEXICO
868.8625	823.8625	MEXICO
868.8750	823.8750	MEXICO
868.8875	823.8875	MEXICO
868.9000	823.9000	MEXICO
868.9125	823.9125	Guard Channel
868.9250	823.9250	U.S.
868.9375	823.9375	U.S.
868.9500	823.9500	U.S.
868.9625	823.9625	U.S.
868.9750	823.9750	U.S.
868.9875	823.9875	U.S.

The following frequencies are available only for mutual aid purposes as defined in Gen. Docket No. 87-112; 866.0125, 866.5125, 867.0125, 867.5125 and 868.0125 MHz.

(b) **Power and Antenna Height Limitations.** The frequencies available for licensing in this band within 110 kilometers (68.4 miles) of the Mexico border listed in para. (a) of this section are subject to Effective Radiated Power (ERP) and Antenna Height limitations as indicated in the table below.

Table D-10

Limits of Effective Radiated Power (ERP) Corresponding to Antenna Heights of Base Stations in the 821-824/866-869 MHz Band within 110 kilometers (68.4 miles) of the Mexican Border

Antenna Height Above Mean Sea Level		ERP
Meters	Feet	Watts (maximum)
0 - 503	0 - 1650	500
504 - 609	1651 - 2000	350
610 - 762	2001 - 2500	200
763 - 914	2501 - 3000	140
915 - 1066	3001 - 3500	100
1067 - 1219	3501 - 4000	75
1220 - 1371	4001 - 4500	70
1372 - 1523	4501 - 5000	65
Above 1523	Above 5000	5

(c) **Additional Frequencies.** In addition, all frequencies designated for use within Mexico in this band are available for assignment within 110 kilometers (68.4 miles) of the Mexico border if the maximum power flux density (PFD) of the station's transmitted signal at any point at or beyond the border does not

exceed -107 dBW/m<2>. The spreading loss shall be calculated using the free space formula taking into account any antenna discrimination in the direction of the border. Authorizations for stations using channels allotted primarily to Mexico will be secondary to Mexican operations and conditioned to require that licensees take immediate action to eliminate any harmful interference resulting from the station's transmitted signal exceeding -107 dBW/m<2>.

§ 88.841 821-824/866-869 MHz band in the U.S./Canadian border area.

For the allotment of the 821-824/866-869 MHz band, the U.S. Canadian Border is divided into eight geographic regions. See § 88.811(b) (900 MHz). Power and antenna height are subject to the limitations at § 817.

(a) **Available Frequencies.** The frequencies in the 821-824/866-869 MHz band listed at § 88.831 are available to eligible applicants in the Public Safety Category for use in the U.S./Canada border area as follows:

Region	Frequency Band (MHz)
1	867.5125 - 868.9875
2	868.1125 - 868.9875
3	866.4625 - 868.9875
4	867.5125 - 868.9875
5	867.5125 - 868.9875
6	867.5125 - 868.9875
7	866.0125 - 868.9875
8	866.0125 - 868.9875

Additionally, 866.0125, 866.5125, 867.0125, 867.5125 and 868.0125 MHz are available in all regions only for mutual aid purposes as defined in Gen. Docket No. 87-112.

(b) **Restricted Use in Part of Region 1.** Channel assignments for stations to be located in the geographic area in Region 1 enclosed by the United States-Canada border, 71° W longitude and the line beginning at the intersection of 44°25'N, 71° W, then running by great circle arc to the intersection of 45° N, 70° W, then North along 70° W longitude to the intersection of 45°45'N, then running West along 45°45'N to the intersection of the United States--Canada border, will be only for every other frequency, beginning with 867.5375 MHz and ending with 868.0875 MHz.

(c) **Restricted Use in Part of Region 3.** Channel assignments for stations to be located in the geographical area in Region 3 enclosed by 81W longitude, the arc of a circle of 100 km radius centered at 42°39'30"N latitude and 81°W longitude at the northern shore of Lake Erie and drawn clockwise from the southerly intersection with 80°30'W longitude to intersect the United States-Canada border West of 81°W, and the United States-Canada border, will be only for be for every other frequency beginning with 866.4625 MHz, and ending with 868.0875 MHz. Coordination with Canada will be required for these channels. U.S. stations must protect Canadian stations operating on 866.4625-868.0875 MHz within an area of 30 km radius from the center city coordinates of London, Ontario (42° 59' N, 81° 14' W).

(d) **Additional Frequencies.** The frequencies listed below are available for assignment in Regions 1-6 if the maximum power flux density (PFD) of the station's transmitted signal does not exceed the limits specified in Tables D-8 and D-9 at § 88.827. The spreading loss must be calculated using the free space formula taking into account any antenna discrimination in the direction of the border.

Table D-10

Additional Frequencies Available (Regions 1-6)		
Region	Frequencies	Effective Radiated Power
1	866.0125-867.4875	See Table D-8
2	866.0125-868.1000	See Table D-8
3	866.0125-866.4500	See Table D-8
4	866.0125-867.4875	See Table D-8
5	866.0125-867.4875	See Table D-9
6	866.0125-867.4875	See Table D-8

Authorizations for stations using these channels will be secondary to Canadian operations and conditioned to require that licensees take immediate action to eliminate any harmful interference resulting from the station's transmitted signal exceeding the values specified in Tables D-8 or D-9 at § 88.827 at or beyond the U.S./Canada border.

(e) **Additional Frequencies in Region 5.** In Region 5, the frequencies 866.0125-867.4875 MHz may be authorized in the United States under the conditions at § 88.825.

Subpart E Special Operations.

§ 88.901 Scope.

The rules in this subpart govern the availability of specific channels for a wide variety of operations including two-way base/mobile, one-way including paging, and operational fixed use. Each type of operation has specific policy and technical rules in addition to or instead of those at Subparts B and C.

LOW-POWER OPERATIONS

§ 88.905 Low-power mobile operations.

Sections 88.907-88.911 govern the assignment and use of certain frequencies allocated specifically for low power operations.

§ 88.907 Low-power frequencies.

(a) Low power operations are secondary, i.e., must protect all other licensed operations and must accept interference from any other operation, and are not available on an exclusive basis. All these frequencies are available for either data or voice use.

(b) The following 3 frequencies in the 30-50 MHz band and 153 frequencies in the 450-470 MHz band are available to eligibles in the **Public Safety Radio Service.**

33.42, 39.06, 46.30, 150.770, 150.775, 150.780, 150.785, 150.790, 150.795,
453.0125, 453.0375, 453.0625, 453.0875, 453.1125, 453.1375, 453.1625,
453.1875, 453.2125, 453.2375, 453.2625, 453.2875, 453.3125, 453.3375,
453.3625, 453.3875, 453.4125, 453.4375, 453.4625, 453.4875, 453.5125,
453.5375, 453.5625, 453.5875, 453.6125, 453.6375, 453.6625, 453.6875,
453.7125, 453.7375, 453.7625, 453.7875, 453.8125, 453.8375, 453.8625,
453.8875, 453.9125, 453.9375, 453.9625, 453.9875, 458.0375, 458.0625,
458.0875, 458.1125, 458.1375, 458.1625, 458.1875, 458.2125, 458.2375,
458.2625, 458.2875, 458.3125, 458.3375, 458.3625, 458.3875, 458.4125,
458.4375, 458.4625, 458.4875, 458.5125, 458.5375, 458.5625, 458.5875,
458.6125, 458.6375, 458.6625, 458.6875, 458.7125, 458.7375, 458.7625,
458.7875, 458.8125, 458.8375, 458.8625, 458.8875, 458.9125, 458.9375,
458.9625, 458.9875, 460.0375, 460.0625, 460.0875, 460.1125, 460.1375,
460.1625, 460.1875, 460.2125, 460.2375, 460.2625, 460.2875, 460.3125,
460.3375, 460.3625, 460.3875, 460.4125, 460.4375, 460.4625, 460.4875,
460.5125, 460.5375, 460.5625, 460.5875, 460.6125, 460.6375, 462.9375,
462.9625, 462.9875, 463.0125, 463.0375, 463.0625, 463.0875, 463.1125,
463.1375, 463.1625, 463.1875, 465.0125, 465.0375, 465.0625, 465.0875,
465.1125, 465.1375, 465.1625, 465.1875, 465.2125, 465.2375, 465.2625,
465.2875, 465.3125, 465.3375, 465.3625, 465.3875, 465.4125, 465.4375,
465.4625, 465.4875, 465.5125, 465.5375, 465.5625, 465.5875, 465.6125,

465.6375, 467.9375, 467.9625, 467.9875, 468.0125, 468.0375, 468.0625, 468.0875, 468.1125, 468.1375, 468.1625, 468.1875

(c) The following 52 frequencies in the 450-470 MHz band are available to eligibles in the **Non-Commercial Radio Service**.

457.515625, 457.521875, 457.528125, 457.534375, 457.540625, 457.546875, 457.553125, 457.559375, 457.565625, 457.571875, 457.578125, 457.584375, 457.590625, 457.596875, 457.603125, 457.609375, 467.740625, 467.746875, 467.753125, 467.759375, 467.765625, 467.771875, 467.778125, 467.784375, 467.790625, 467.796875, 467.803125, 467.809375, 467.815625, 467.821875, 467.828125, 467.834375, 467.840625, 467.846875, 467.853125, 467.859375, 467.865625, 467.871875, 467.878125, 467.884375, 467.890625, 467.896875, 467.903125, 467.909375, 467.915625, 467.921875, 467.928125, 467.934375

(d) The following 8 frequencies in the 25-50 MHz band, 200 frequencies in the 72-76 MHz band, 28 frequencies in the 150-174 MHz band, 5 frequencies in the 220-221 MHz band (which are paired with mobile only frequencies 1 MHz higher) and 538 frequencies in the 450-470 MHz band are available to eligibles in the **General Category Pool**.

27.51, 27.53, 30.84, 33.12, 33.14, 33.40, 35.02, 42.98, 72.0125, 72.0175, 72.0225, 72.0275, 72.0325, 72.0375, 72.0425, 72.0475, 72.0525, 72.0575, 72.0625, 72.0675, 72.0725, 72.0775, 72.0825, 72.0875, 72.0925, 72.0975, 72.1025, 72.1075, 72.1125, 72.1175, 72.1225, 72.1275, 72.1325, 72.1375, 72.1425, 72.1475, 72.1525, 72.1575, 72.1625, 72.1675, 72.1725, 72.1775, 72.1825, 72.1875, 72.1925, 72.1975, 72.2025, 72.2075, 72.2125, 72.2175, 72.2225, 72.2275, 72.2325, 72.2375, 72.2425, 72.2475, 72.2525, 72.2575, 72.2625, 72.2675, 72.2725, 72.2775, 72.2825, 72.2875, 72.2925, 72.2975, 72.3025, 72.3075, 72.3125, 72.3175, 72.3225, 72.3275, 72.3325, 72.3375, 72.3425, 72.3475, 72.3525, 72.3575, 72.3625, 72.3675, 72.3725, 72.3775, 72.3825, 72.3875, 72.3925, 72.3975, 72.4025, 72.4075, 72.4325, 72.4375, 72.4425, 72.4475, 72.4725, 72.4775, 72.4825, 72.4875, 72.5125, 72.5175, 72.5225, 72.5275, 72.5525, 72.5575, 72.5625, 72.5675, 72.5925, 72.5975, 72.6025, 72.6075, 74.6025, 74.6075, 74.6125, 74.6175, 74.6225, 74.6275, 74.6325, 74.6375, 74.6425, 74.6475, 74.6525, 74.6575, 74.6625, 74.6675, 74.6725, 74.6775, 74.6825, 74.6875, 74.6925, 74.6975, 74.7025, 74.7075, 74.7125, 74.7175, 74.7225, 74.7275, 74.7325, 74.7375, 74.7425, 74.7475, 74.7525, 74.7575, 74.7625, 74.7675, 74.7725, 74.7775, 74.7825, 74.7875, 74.7925, 74.7975, 75.2025, 75.2075, 75.2125, 75.2175, 75.2225, 75.2275, 75.2325, 75.2375, 75.2425, 75.2475, 75.2525, 75.2575, 75.2625, 75.2675, 75.2725, 75.2775, 75.2825, 75.2875, 75.2925, 75.2975, 75.3025, 75.3075, 75.3125, 75.3175, 75.3225, 75.3275, 75.3325, 75.3375, 75.3425, 75.3475, 75.3525, 75.3575, 75.3625, 75.3675, 75.3725, 75.3775, 75.3825, 75.3875, 75.3925, 75.3975, 75.4325, 75.4375, 75.4425, 75.4475, 75.4725, 75.4775, 75.4825, 75.4875, 75.5125, 75.5175, 75.5225, 75.5275, 75.5525, 75.5575, 75.5625, 75.5675, 75.5925, 75.5975, 75.6025, 75.6075, 154.570, 154.575, 154.600, 154.605, 155.410, 155.425, 155.440, 155.455, 155.470, 155.485, 155.500, 155.515, 155.530, 155.545, 155.560, 155.575, 155.590, 155.605, 155.620, 155.635, 155.650, 155.665, 155.680, 155.695, 155.710, 155.725, 155.740, 155.755, 220.9775, 220.9825, 220.9875, 220.9925, 220.9975, 221.9775, 221.9825, 221.9875, 221.9925, 221.9975, 451.0375, 451.0625, 451.0875,

451.1125, 451.1375, 451.1625, 451.1875, 451.2125, 451.2375, 451.2625,
451.2875, 451.3125, 451.3375, 451.3625, 451.3875, 451.4125, 451.4375,
451.4625, 451.4875, 451.5125, 451.5375, 451.5625, 451.5875, 451.6125,
451.6375, 451.6625, 451.6875, 451.7125, 451.7375, 451.7625, 452.0375,
452.0625, 452.0875, 452.1125, 452.1375, 452.1625, 452.1875, 452.2125,
452.2375, 452.2625, 452.2875, 452.3125, 452.3375, 452.3625, 452.3875,
452.4125, 452.4375, 452.4625, 452.4875, 452.5125, 452.5375, 452.5625,
452.5875, 452.6125, 452.6375, 452.6625, 452.6875, 452.7125, 452.7375,
452.7625, 452.7875, 452.8125, 452.8375, 452.8625, 452.8875, 452.9125,
452.9375, 452.9625, 452.9875, 456.0375, 456.0625, 456.0875, 456.1125,
456.1375, 456.1625, 456.1875, 456.2125, 456.2375, 456.2625, 456.2875,
456.3125, 456.3375, 456.3625, 456.3875, 456.4125, 456.4375, 456.4625,
456.4875, 456.5125, 456.5375, 456.5625, 456.5875, 456.6125, 456.6375,
456.6625, 456.6875, 456.7125, 456.7375, 456.7625, 457.0375, 457.0625,
457.0875, 457.1125, 457.1375, 457.1625, 457.1875, 457.2125, 457.2375,
457.2625, 457.2875, 457.3125, 457.3375, 457.3625, 457.3875, 457.4125,
457.4375, 457.4625, 457.4875, 457.5125, 457.5375, 457.5625, 457.5875,
457.6125, 457.6375, 457.6625, 457.6875, 457.7125, 457.7375, 457.7625,
457.7875, 457.8125, 457.8375, 457.8625, 457.8875, 457.9125, 457.9375,
457.9625, 457.9875, 458.0125, 460.6625, 460.6875, 460.7125, 460.7375,
460.7625, 460.7875, 460.8125, 460.8375, 460.8625, 460.8875, 460.9125,
460.9375, 460.9625, 460.9875, 461.0125, 461.0375, 461.0625, 461.0875,
461.1125, 461.1375, 461.1625, 461.1875, 461.2125, 461.2375, 461.2625,
461.2875, 461.3125, 461.3375, 461.3625, 461.3875, 461.4125, 461.4375,
461.4625, 461.4875, 461.5125, 461.5375, 461.5625, 461.5875, 461.6125,
461.6375, 461.6625, 461.6875, 461.7125, 461.7375, 461.7625, 461.7875,
461.8125, 461.8375, 461.8625, 461.8875, 461.9125, 461.9375, 461.9625,
461.9875, 462.0125, 462.0375, 462.0625, 462.0875, 462.1125, 462.1375,
462.1625, 462.1875, 462.2125, 462.2375, 462.2625, 462.2875, 462.3125,
462.3375, 462.3625, 462.3875, 462.4125, 462.4375, 462.4625, 462.4875,
462.5125, 462.7625, 462.7875, 462.8125, 462.8375, 462.8625, 462.8875,
462.9125, 463.2125, 463.2375, 463.2625, 463.2875, 463.3125, 463.3375,
463.3625, 463.3875, 463.4125, 463.4375, 463.4625, 463.4875, 463.5125,
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463.7125, 463.7375, 463.7625, 463.7875, 463.8125, 463.8375, 463.8625,
463.8875, 463.9125, 463.9375, 463.9625, 463.9875, 464.0125, 464.0375,
464.0625, 464.0875, 464.1125, 464.1375, 464.1625, 464.1875, 464.2125,
464.2375, 464.2625, 464.2875, 464.3125, 464.315625, 464.334375, 464.3375,
464.340625, 464.359375, 464.3625, 464.365625, 464.384375, 464.3875,
464.390625, 464.409375, 464.4125, 464.415625, 464.434375, 464.4375,
464.440625, 464.459375, 464.4625, 464.465625, 464.484375, 464.4875, 464.5125,
464.515625, 464.534375, 464.5375, 464.5625, 464.565625, 464.584375, 464.5875,
464.6125, 464.615625, 464.634375, 464.6375, 464.6625, 464.665625, 464.684375,
464.6875, 464.690625, 464.709375, 464.7125, 464.715625, 464.734375, 464.7375,
464.740625, 464.759375, 464.7625, 464.765625, 464.784375, 464.7875,
464.790625, 464.809375, 464.8125, 464.815625, 464.834375, 464.8375,
464.840625, 464.859375, 464.8625, 464.865625, 464.884375, 464.8875,
464.890625, 464.909375, 464.9125, 464.915625, 464.934375, 464.9375,
464.940625, 464.959375, 464.9625, 464.965625, 464.984375, 464.9875, 465.6625,
465.6875, 465.7125, 465.7375, 465.7625, 465.7875, 465.8125, 465.8375,
465.8625, 465.8875, 465.9125, 465.9375, 465.9625, 465.9875, 466.0125,
466.0375, 466.0625, 466.0875, 466.1125, 466.1375, 466.1625, 466.1875,

466.2125, 466.2375, 466.2625, 466.2875, 466.3125, 466.3375, 466.3625, 466.3875, 466.4125, 466.4375, 466.4625, 466.4875, 466.5125, 466.5375, 466.5625, 466.5875, 466.6125, 466.6375, 466.6625, 466.6875, 466.7125, 466.7375, 466.7625, 466.7875, 466.8125, 466.8375, 466.8625, 466.8875, 466.9125, 466.9375, 466.9625, 466.9875, 467.0125, 467.0375, 467.0625, 467.0875, 467.1125, 467.1375, 467.1625, 467.1875, 467.2125, 467.2375, 467.2625, 467.2875, 467.3125, 467.3375, 467.3625, 467.3875, 467.4125, 467.4375, 467.4625, 467.4875, 467.5125, 467.7625, 467.7875, 467.8125, 467.8375, 467.8625, 467.8875, 467.9125, 468.2125, 468.2375, 468.2625, 468.2875, 468.3125, 468.3375, 468.3625, 468.3875, 468.4125, 468.4375, 468.4625, 468.4875, 468.5125, 468.5375, 468.5625, 468.5875, 468.6125, 468.6375, 468.6625, 468.6875, 468.7125, 468.7375, 468.7625, 468.7875, 468.8125, 468.8375, 468.8625, 468.8875, 468.9125, 468.9375, 468.9625, 468.9875, 469.0125, 469.0375, 469.0625, 469.0875, 469.1125, 469.1375, 469.1625, 469.1875, 469.2125, 469.2375, 469.2625, 469.2875, 469.3125, 469.315625, 469.334375, 469.3375, 469.340625, 469.359375, 469.3625, 469.365625, 469.384375, 469.3875, 469.390625, 469.409375, 469.4125, 469.415625, 469.434375, 469.4375, 469.440625, 469.459375, 469.4625, 469.465625, 469.484375, 469.4875, 469.5125, 469.515625, 469.534375, 469.5375, 469.5625, 469.565625, 469.584375, 469.5875, 469.6125, 469.615625, 469.634375, 469.6375, 469.6625, 469.665625, 469.684375, 469.6875, 469.690625, 469.709375, 469.7125, 469.715625, 469.734375, 469.7375, 469.740625, 469.759375, 469.7625, 469.765625, 469.784375, 469.7875, 469.790625, 469.809375, 469.8125, 469.815625, 469.834375, 469.8375, 469.840625, 469.859375, 469.8625, 469.865625, 469.884375, 469.8875, 469.890625, 469.909375, 469.9125, 469.915625, 464.934375, 469.9375, 469.940625, 469.959375, 469.9625, 469.965625, 469.984375

§ 88.909 Power limitations.

The following power limitations apply to the frequencies listed at § 88.907.

(a) **25-50 MHz**. Operation on these frequencies is limited to a maximum transmitter output power of 2 watt. The separation between the control point and the center of the radiating portion of the antenna of any base or fixed station (which will be licensed as a mobile unit) may not exceed 8 m (25 ft). Output power on the frequencies 33.42 and 46.30 MHz is limited to 10 watts.

(b) **72-76 MHz**. Mobile operation is limited to a maximum transmitter output power of 1 watt. The antennas of transmitters operating on these frequencies must be directly mounted or installed upon the transmitting unit, except when permanently installed aboard a vehicle, antenna and transmitter may be separated as required for convenience in mounting.

(c) **150.770-155.755 MHz**. Operation on these frequencies is limited to 2 watts and a maximum antenna height of 6.1 m (20 ft) above ground.

(d) **220.9775-221/221.9775-222** MHz. Frequencies in this band are limited to 2 watts ERP and a maximum antenna height of 6.1 m (20 ft) above ground.

(e) **Public Safety Radio Service and General Category Pool 450-470 MHz.**

(1) Operation on 450-470 MHz frequencies listed in §§ 88.907(b) and (d) is limited 2 watts.

(2) Antennas of mobile stations used as fixed stations communicating with one or more associated stations located within 45 degrees of azimuth must be directional and have a front to back ratio of at least 15 dB. Except as provided below, the height of the antenna used at any mobile station serving as a base, fixed or mobile relay station may not exceed 6.1 m (20 ft) above the ground.

(i) There is no limit on the length or height above ground of any commercially manufactured radiating transmission line if the transmission line is terminated in a nonradiating load and is routed at least 6.1 m (20 ft) interior to the edge of any structure or is routed below ground level.

(ii) Sea-based stations may utilize antennas mounted not more than 6.1 m (20 ft) above the man-made supporting structure, including antenna structures.

(f) **Non-Commercial Radio Service 450-470 MHz.**

(1) Operation on 450-470 MHz frequencies listed in § 88.907(c) is limited to 2 watts.

(2) Base and fixed stations may operate, licensed as mobile units, provided that the separation between the control point and the center of the antenna of any units so used does not exceed 8 m (25 ft).

(3) **Cargo Loading.** For mobile relay operations at a marine loading dock, the center of the radiating system must be located no more than 3 m (10 ft) above a vessel's highest working deck.

§ 88.911 Assignment limitations.

This section provides assignment limitations for the frequencies listed at § 88.907 in addition to or instead of those in Subpart B.

(a) Each authorized station will be licensed as a mobile station. Any units of such a station, however, may be used to provide the operational functions of a base or fixed station.

(b) **30.84, 33.14-42.98 and 150.770-150.795 MHz.** These frequencies may not be used aboard aircraft.

(c) **35.02 MHz.** This frequency is shared with physically handicapped paging systems. See 88.1079.

(d) **72-76 MHz**.

(1) Mobile operation is subject to the condition that no interference is caused to the reception of television stations operating on channels 4 or 5. Interference will be considered to occur whenever reception of a regularly used television signal is impaired by signals radiated by stations operating under these rules regardless of the quality of such reception or the strength of the signal used. In order to minimize the hazard of such interference, the licensee must determine whether interference is being caused to television reception of receivers, other than those under the control of the licensee, that are located within 31 m (100 ft) of any point where the stations licensed under these rules may be operated. In any case, the licensee must correct, at its own expense, any such interference and if the interference cannot be eliminated by the application of suitable techniques, the licensee must suspend operation of the offending transmitter. If the complainant refuses to permit the licensee to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee is absolved of further responsibility.

(2) Horizontal polarization will not be allowed; and the gain of antennas must not exceed that of a halfwave dipole.

(e) **220.9750-221 MHz**.

(1) The five frequencies in this band are for base station use, are paired with frequencies 1 MHz higher and restricted to data use (including transmission of text, control code, digitized voice) only.

(2) The frequencies in this band are available to both Federal Government and non-Federal Government applicants, and may be assigned singly or in contiguous channel groups.

(3) The frequencies in this band are set aside for data only operations until March 31, 2000. The term "data", for this purpose, includes the transmission of text, control codes, and other information typical of machine-to-machine communications. Digitized voice signals are considered data signals under this part.

(f) **Public Safety Radio Service and General Category Pool 450-470 MHz**.

(1) Mobile relay stations may be used.

(2) Wide area operations will not be authorized. The area of normal day-to-day operations must be described in the application in terms of maximum distance from a geographic center (latitude and longitude).

(g) **Non-Commercial Radio Service 450-470 MHz**.

(1) Frequencies in the 450-470 MHz band listed at § 88.907(c) may not be used aboard aircraft in flight.

(2) Mobile relay stations may be temporarily installed at or in the vicinity of a dock or cargo handling facility when a vessel is along side the dock or cargo handling facility. For this purpose, frequencies in the 457.5125-457.6125 MHz range may be paired with frequencies 10.225 MHz higher. The mobile relay must be used on the lower frequency of the pair.

(3) Simplex operations on the lower half of paired frequencies are permitted.

(4) These frequencies may be used for mobile operation for radio remote control and telemetering functions. A1D, A2D, F1D, or F2D emission may be authorized and mobile stations on the mobile only frequency used to control remote objects or devices may transmit with a continuous carrier.

§ 88.921 Secondary use of airport channels.

The frequencies 460.640625-460.884375/460.640625-460.884375 MHz may be assigned to low power (2 watts or less) stations in the Non-Commercial Radio Service for use in areas removed by 8 km (5 mi) from the boundaries of airports serving any urbanized areas of 200,000 or more population, U.S. Census on Population, 1960, vol. 1 table 23, page 1-50. All such use is restricted to the confines of a single building or complex of buildings, campus, industrial complex or manufacturing yard area. Also see § 88.729.

§ 88.931 Wireless microphone operations in the 169-172 MHz band.

(a) **Available Frequencies.** The following frequencies are available for wireless microphone operations to eligibles in this part:

169.445, 169.505, 170.245, 170.305, 171.045, 171.105, 171.845, 171.905 MHz

(b) **Authorization Limitations.**

(1) The emission bandwidth may not exceed 54 kHz and the output power may not exceed 50 milliwatts.

(2) The frequency stability of wireless microphones must limit the total emission to within ± 32.5 kHz of the assigned frequency.

(3) Wireless microphone operations are unprotected from interference from other licensed operations in the band. If any interference from wireless microphone operation is received by any Federal Government or non-Federal Government operation, the wireless microphone must cease operation on the frequency involved. Applications are subject to Government coordination.

(c) Stations authorized under this section are exempt from station identification.

§ 88.941 Public safety covert operations.

(a) **Available Frequencies**. A licensee may use, without special authorization from the Commission, any Public Safety Radio Service mobile service frequency between 37 and 952 MHz, listed in Subpart D or E of this part, for communications in connection with physical surveillance, stakeouts, raids, and other such activities. If spread spectrum transmitters are utilized, frequency hopping or direct sequence equipment may be employed.

(b) Such use will be **secondary** to operations of licensees regularly authorized on the assigned frequencies.

(c) The maximum output **power** for such operations is 2 watts.

(d) Transmitters, operating under this provision of the rules, are **exempt from the station identification** requirements of § 88.489.

(e) Spread spectrum **frequency hopping** transmitters must use at least 20 hopping frequencies and the average time of occupancy on any frequency must not be greater than 1/10 second in every 2 seconds.

ITINERANT OPERATIONS

§ 88.951 Itinerant operations.

Operation of a radio station is considered itinerant if the operation occurs at unspecified temporary sites. Use at a site is considered temporary if the system is in operation at that site for 180 days or less. Itinerant users should be aware that no protection is provided from other itinerant users.

§ 88.953 Itinerant frequencies.

(a) The following frequencies are available **only** to stations used in **itinerant** operations:

27.49 MHz, 31.44, 35.04, 43.04, 151.505, 151.510, 151.625, 151.630, 158.400, 158.405, 159.055, 159.070, 451.790625/456.790625, 451.796875/456.796875, 451.803125/456.803125, 451.809375/456.809375, 464.490625/469.490625, 464.496875/469.496875, 464.503125/469.503125, 464.509375/469.509375, 464.540625/469.540625, 464.546875/469.546875, 464.553125/469.553125, 464.559375/469.559375, 464.590625/469.590625, 464.609375/469.609375, 464.640625/469.640625, 464.659375/469.659375

(b) **Both permanent and itinerant** operations are permitted on the following frequencies:

30.64 MHz, 31.28, 31.32, 31.36, 31.40, 31.48, 31.52, 31.56, 31.60, 31.64, 31.68, 31.72, 31.76, 31.80, 31.84, 31.88, 31.92, 31.96, 35.28, 35.32, 35.36, 35.40, 35.44, 35.48, 35.52, 35.94, 35.96, 35.98, 43.02, 43.04, 43.06, 43.08,

43.10, 43.12, 43.14, 43.28, 43.32, 43.36, 43.40, 43.44, 43.48, 43.52, 49.54, 49.58.

(c) Itinerant operations may be conducted, with written concurrence from all relevant exclusive use overlay licensees (see § 88.179), on a **secondary** basis, on any channel/location that has an exclusive use overlay licensee.

§ 88.955 Application requirements.

(a) **Coordination Exemption.** Applications requesting a frequency designated only for itinerant operation (§ 88.953(a)) need not be accompanied by evidence of frequency coordination.

(b) The applicant must **specify the general geographic area** within which the operation will be confined. The area may be specified as a city, a county or counties, a state or states or other definable geographic area such as a specified radius in kilometers of a particular city or known geographic site.

§ 88.957 Power limitations.

Use of the itinerant frequencies 464.490625/469.490625, 464.496875/469.496875, 464.503125/469.503125, 464.509375/469.509375, 464.540625/469.540625, 464.546875/469.546875, 464.553125/469.553125, 464.559375/469.559375, 464.590625/469.590625, 464.609375/469.609375, 464.640625/469.640625, 464.659375/469.659375 MHz is limited to 35 watts output.

§ 88.965 Oil spill containment frequencies.

The frequencies 25.04, 25.08, 150.980, 150.985, 154.585, 154.590, 158.440, 158.445, 159.480, 159.485, 453.990625/458.990625, 453.996875/458.996875, 454.003125/459.003125, 454.009375/459.009375 MHz are available primarily for oil spill containment and cleanup operations and for training and drills essential in the preparations for the containment and cleanup of oil spills. They are secondarily available for general base-mobile operations on a non-interference basis. Secondary users of this frequency must suspend operations should oil spill containment and cleanup activities be present in their area of operation or upon notice by the Commission or a primary user that harmful interference is being caused to oil spill containment or cleanup activities in other areas. The frequency 25.08 MHz is available only on a secondary basis to stations in the maritime mobile service. In addition, the frequencies 36.25 and 41.71 MHz are available for shared use with the Federal Government on inland and coastal waterways. Operation on the frequencies 154.585 and 154.590 MHz is limited to a maximum output power of 20 watts.

§ 88.975 Nationwide system operations.

Sections 88.977-88.987 govern the assignment of channels in the 220-222 MHz band designated for nationwide use.

§ 88.977 Available frequencies.

Base Station Frequencies (MHz)	Number of Channel Pairs	Radio Service
220.1025 - 220.1225	5	General Pool
220.1275 - 220.1475	5	General Pool
220.2525 - 220.2975	10	Non-Commercial
220.4025 - 220.4225	5	Non-Commercial
220.4275 - 220.4475	5	Non-Commercial
220.5525 - 220.5725	5	Federal Government
220.5775 - 220.5975	5	Federal Government
220.7025 - 220.7475	10	Non-Commercial
220.7525 - 220.7725	5	General Pool
220.7775 - 220.7975	5	General Pool

Each of these frequencies is paired with a frequency 1 MHz higher for mobile use.

§ 88.979 Entry Criteria.

(a) As set forth in § 88.977, two blocks of ten and six blocks of five contiguous channels have been set aside for exclusive assignments for non-Federal Government use on a nationwide basis. Depending upon whether the application is for nationwide commercial or non-commercial channel blocks, it must comply with the following:

(1) Applicants for commercial nationwide channels must include certification that, within ten years of receiving a license, the applicant will construct a minimum of one base station in at least 70 different geographic areas; that base stations will be located in a minimum of 28 of the 100 urban areas listed in § 88.1601; that each base station in the top ten large urban areas listed in § 88.1601 will have all assigned nationwide channels constructed and in operation (regularly interacting with mobile and/or portable units); and that all other base stations will have a minimum of five of the assigned nationwide channels constructed and in operation. Applicants for non-commercial nationwide channels must include certification that, within five years of receiving a license, the applicant will construct a minimum of at least one base station in at least 70 different geographic areas designated in the application; that base stations will be located in a minimum of 28 of the 100 urban areas listed in § 88.1601; that each base station in the top ten urban areas designated § 88.1601 will have all assigned nationwide channels

constructed and in operation (regularly interacting with mobile and/or portable units); and that all other base stations will have a minimum of five of the assigned nationwide channels constructed and in operation.

(2) Applicants for commercial and non-commercial nationwide channels must include certification that they will meet the construction requirements set forth in § 88.983.

(3) Applicants for commercial nationwide channels must include a ten-year schedule detailing plans for construction of the proposed system. Applicants for non-commercial nationwide channels must include a five-year schedule detailing plans for construction of the proposed system.

(4) Applicants for commercial nationwide channels must include an itemized estimate of the cost of constructing 40 percent of the system and operating the system during the first four years of the license term. Applicants for non-commercial nationwide channels must include an itemized estimate of the cost of constructing the entire system within five years and operating the system during the first five years of the license term.

(5) Applicants for commercial nationwide channels must include proof that the applicant has sufficient financial resources to construct 40 percent of the system and operate the proposed system for the first four years of the license term; i.e., that the applicant has net current assets sufficient to cover estimated costs or a firm financial commitment sufficient to cover estimated costs. Applicants for non-commercial nationwide channels must include proof that the applicant has sufficient financial resources to construct the entire system within five years of the license grant and operate the proposed system for the first five years of the license term; i.e., that the applicant has net current assets to cover estimated costs or a firm financial commitment sufficient to cover estimated costs.

(6) Applicants for non-commercial nationwide licensing must also submit a certification demonstrating an actual presence or business plan necessitating internal communications capacity in the 70 or more markets identified in the license application.

(b) Applicants for commercial and non-commercial nationwide licensing relying on personal or internal resources for the showing required in paragraph (a) of this section must submit independently audited financial statements certified within one year of the date of the application showing net current assets sufficient to meet estimated construction and operating costs. Applicants for both commercial and non-commercial nationwide licensing must also submit an unaudited balance sheet, current within 60 days of the date of submission, that clearly shows the continued availability of sufficient net current assets to construct and operate the proposed system, and a certification by the applicant or an officer of the applicant organization attesting to the validity of the balance sheet.

(c) Applicants submitting evidence of a firm financial commitment for the showing required in paragraph (a) of this section must obtain the commitment from a **bona fide** commercially acceptable source, e.g., a state or federally

chartered bank or savings and loan institution, other recognized financial institution, the financial arm of a capital equipment supplier, or an investment banking house. If the lender is not a state or federally chartered bank or savings and loan institution, other recognized financial institution, the financial arm of a capital equipment supplier, or an investment banking house, the lender must also demonstrate that it has funds available to cover the total commitments it has made. The lender's commitment shall contain a statement that the lender:

(1) Has examined the financial condition of the applicant including an audited financial statement, and has determined that the applicant is creditworthy:

(2) Has examined the financial viability of the proposed system for which the applicant intends to use the commitment; and

(3) Is willing, if the applicant is seeking a commercial nationwide license, to provide a sum to the applicant sufficient to cover the realistic and prudent estimated costs of construction of 40 percent of the system and operation of the system for the first four years of the license term; and

(4) Is willing, if the applicant is seeking a non-commercial nationwide license, to provide a sum to the applicant sufficient to cover the realistic and prudent estimated costs of construction of a minimum of at least one base station in at least 70 different geographic areas designated in the application within five years of receiving a license, and operation of the system for the first five years of the license term.

(d) **One System only**. An applicant may not have **any** interest in another pending application for a nationwide system in the same category (10-channel non-commercial, 5-channel non-commercial, 5-channel commercial) in that band.

§ 88.981 Amendment of applications and assignment or transfer of authorizations.

(a) Except as indicated in paragraph (b) of this section the **Commission will not consent** to the following:

(1) Any request to amend an application so as to substitute a new entity as the applicant;

(2) Any application to transfer or assign a license for a nationwide system before the licensee has constructed at least 40% of the proposed system pursuant to the provisions of § 88.983.

(3) Any application to transfer or assign a nationwide non-commercial system before the expiration of the first ten-year license term.

(b) **Exceptions**. The Commission will grant the applications described in paragraph (a) of this section if:

(1) The request to amend an application or to transfer or assign a license does not involve a substantial change in the ownership or control of the applicant; or

(2) The changes in the ownership or control of the applicant are involuntary due to the original applicant's insolvency, bankruptcy, incapacity, or death.

(c) **Responsibilities of assignee**. The assignee or transferee of a nationwide system is subject to the construction benchmarks and reporting requirements of § 88.983. The assignee or transferee of a nationwide system is not subject to the application requirements at § 88.979.

(d) A licensee may not **partially assign** any nationwide authorization.

§ 88.983 Construction requirements.

(a) Licensees granted **SMR** nationwide authorizations must construct base stations having a minimum of five assigned nationwide channels and place those base stations in operation as follows:

(1) In at least 10 percent of the geographic areas designated in the application within two years of initial license grant, including base stations in at least seven urban areas listed in § 88.1601;

(2) In at least 40 percent of the geographic areas designated in the application within four years of initial license grant, including base stations in at least 28 urban areas listed in § 88.1601;

(3) In at least 70 percent of the geographic areas designated in the application within six years of initial license grant, including base stations in at least 28 urban areas listed in § 88.1601;

(4) In all geographic areas designated in the application within ten years of initial license grant, including base stations in at least 28 urban areas listed in § 88.1601;

(b) Base stations are considered to be **located in an urban area** if they are within 60 kilometers (37.3 miles) of the coordinates listed in § 88.1601;

(c) SMRs not meeting the two and four year criteria will **lose the entire authorization**, but will be permitted a six month period to convert the system to non-nationwide channels, if such channels are available.

(d) SMRs not meeting the six and ten year criteria will **lose the authorizations for the facilities not constructed**, but will retain exclusivity for constructed facilities.

(e) Licensees for **Non-Commercial** channels must construct base stations in a minimum of 70 designated in their application within five years of the initial license grant.

§ 88.985 Progress reports.

(a) Each nationwide SMR licensee must file a system progress report on or before the anniversary date of the grant of its license after **2, 4, 6 and 10 years**, demonstrating compliance with the relevant construction benchmark criteria. This progress report must include:

(1) An overall status report of the system that must include, but need not be limited to, a list of all sites at which base stations have been constructed, with antenna heights and effective radiated power specified for each site, a list of all other known base station sites at which construction has not been completed, and a construction and operational schedule for the next five-year period, including any known changes to the plan for construction and operation submitted with the licensee's original application for the system.

(2) An analysis of the system's compliance with the requirements of § 88.983, with documentation to support representations of completed construction, including, but not limited to equipment purchase orders and contracts, lease or purchase contracts relating to antenna site arrangements, equipment and antenna identification (serial) numbers, and service agreements and visits.

(b) Beginning with its **second license term**, each nationwide licensee must file a progress report once every five years on the anniversary date of the grant of the first renewal of its authorization, including the information required by paragraph (a)(1) of this Section.

(c) SMRs must **maintain records** of the names and addresses of each customer and the dates that service commenced and terminated. These records must be made available to the Commission upon request. All licensees must report at the time of license renewal the number of mobile units being served to Land Mobile Branch, Licensing Division, Private Radio Bureau, Gettysburg, PA 17326.

§ 88.987 Authorization limitations.

(a) These frequencies may only be used for **base/mobile and mobile relay transmissions** on a primary basis, and fixed voice, signaling and paging transmissions ancillary to land mobile use. Fixed-only and paging-only operations are not permitted.

(b) Licensees of non-commercial nationwide systems may **lease excess capacity** of their systems as private carriers five years after the date of the original license grant provided their system is fully constructed and operational.

(c) **Station identification** pursuant to § 88.489 is not required.

(d) Also see § 88.227 for special separation requirements concerning 220.1025-220.1475 MHz.

INNOVATIVE SHARED USE OPERATIONS

§ 88.997 Innovative shared use operations.

Sections 88.999-88.1019 govern innovative shared use operations. Licenses for these operations are available for geographic areas corresponding to each of the seven regional markets corresponding to the regional Bell operating companies, including the areas within their operational boundaries that may be served by other carriers. Alaska, Hawaii, Puerto Rico and other possessions and territories will be included in the geographically closest market.

§ 88.999 Innovative shared use voice/data frequencies.

Except as specified at § 88.1001, any innovative shared use radio operations licensee for a given market may use any of the following 258 frequency pairs on a shared basis with all other innovative shared use radio operations licensees in that market. The lower half of each pair is base or mobile use. The upper half is for mobile only use.

150.810/155.770, 150.825/155.785, 150.840/155.800, 150.855/155.815,
150.870/155.830, 150.885/155.845, 150.900/155.860, 150.915/155.875,
150.930/155.890, 150.945/155.905, 150.960/155.920, 150.975/155.935,
150.990/155.950, 151.005/155.965, 151.020/155.980, 151.035/155.995,
151.050/156.010, 151.065/156.025, 151.080/156.040, 151.095/156.055,
151.110/156.070, 151.125/156.085, 151.140/156.100, 151.155/156.115,
151.170/156.130, 151.185/156.145, 151.200/156.160, 151.215/156.175,
151.230/156.190, 151.245/156.205, 151.260/156.220, 151.275/156.235,
151.290/157.465, 151.305/157.480, 151.320/157.495, 151.335/157.510,
151.350/157.525, 151.365/157.540, 151.380/157.555, 151.395/157.570,
151.410/157.585, 151.425/157.600, 151.440/157.615, 151.455/157.630,
151.470/157.645, 151.485/157.660, 151.500/157.675, 151.515/157.690,
151.530/157.705, 151.545/158.125, 151.560/158.140, 151.575/158.155,
151.590/158.170, 151.605/158.185, 151.620/158.200, 151.635/158.215,
151.650/158.230, 151.665/158.245, 151.680/158.260, 151.695/158.275,
151.710/158.290, 151.725/158.305, 151.740/158.320, 151.755/158.335,
151.770/158.350, 151.785/158.365, 151.800/158.380, 151.815/158.395,
151.830/158.410, 151.845/158.425, 151.860/158.725, 151.875/158.740,
151.890/158.755, 151.905/158.770, 151.920/158.785, 151.935/158.800,
151.950/158.815, 151.965/158.830, 151.980/158.845, 152.265/158.860,
152.280/158.875, 152.295/158.890, 152.310/158.905, 152.325/158.920,
152.340/158.935, 152.355/158.950, 152.370/158.965, 152.385/158.980,
152.400/158.995, 152.415/159.010, 152.430/159.025, 152.445/159.040,
152.865/159.085, 152.880/159.100, 152.895/159.115, 152.910/159.130,
152.925/159.145, 152.940/159.160, 152.955/159.175, 152.970/159.190,
152.985/159.205, 153.000/159.220, 153.015/159.235, 153.030/159.250,
153.045/159.265, 153.060/159.280, 153.075/159.295, 153.090/159.310,
153.105/159.325, 153.120/159.340, 153.135/159.355, 153.150/159.370,

153.165/159.385, 153.180/159.400, 153.195/159.415, 153.210/159.430,
153.225/159.445, 153.240/159.460, 153.255/159.475, 153.270/159.490,
153.285/159.505, 153.300/159.520, 153.315/159.535, 153.330/159.550,
153.345/159.565, 153.360/159.580, 153.375/159.595, 153.390/159.610,
153.405/159.625, 153.420/159.640, 153.435/159.655, 153.450/159.670,
153.465/159.685, 153.480/159.700, 153.495/159.715, 153.510/159.730,
153.525/159.745, 153.540/159.760, 153.555/159.775, 153.570/159.790,
153.585/159.805, 153.600/159.820, 153.615/159.835, 153.630/159.850,
153.645/159.865, 153.660/159.880, 153.675/159.895, 153.690/159.910,
153.705/159.925, 153.720/159.940, 153.735/159.955, 153.750/159.970,
153.765/159.985, 153.780/160.000, 153.795/160.015, 153.810/160.030,
153.825/160.045, 153.840/160.060, 153.855/160.075, 153.870/160.090,
153.885/160.105, 153.900/160.120, 153.915/160.135, 153.930/160.150,
153.945/160.165, 153.960/160.180, 153.975/160.195, 153.990/160.210,
154.005/160.225, 154.020/160.240, 154.035/160.255, 154.050/160.270,
154.065/160.285, 154.080/160.300, 154.095/160.315, 154.110/160.330,
154.125/160.345, 154.140/160.360, 154.155/160.375, 154.170/160.390,
154.185/160.405, 154.200/160.420, 154.215/160.435, 154.230/160.450,
154.245/160.465, 154.260/160.480, 154.275/160.495, 154.290/160.510,
154.305/160.525, 154.320/160.540, 154.335/160.555, 154.350/160.570,
154.365/160.585, 154.380/160.600, 154.395/160.615, 154.410/160.630,
154.425/160.645, 154.440/160.660, 154.485/160.675, 154.500/160.690,
154.535/160.705, 154.550/160.720, 154.565/160.735, 154.580/160.750,
154.595/160.765, 154.610/160.780, 154.640/160.795, 154.645/160.810,
154.660/160.825, 154.675/160.840, 154.690/160.855, 154.705/160.870,
154.720/160.885, 154.735/160.900, 154.750/160.915, 154.765/160.930,
154.780/160.945, 154.795/160.960, 154.810/160.975, 154.825/160.990,
154.840/161.005, 154.855/161.020, 154.870/161.035, 154.885/161.050,
154.900/161.065, 154.915/161.080, 154.930/161.095, 154.945/161.110,
154.960/161.125, 154.975/161.140, 154.990/161.155, 155.005/161.170,
155.020/161.185, 155.035/161.200, 155.050/161.215, 155.065/161.230,
155.080/161.245, 155.095/161.260, 155.110/161.275, 155.125/161.290,
155.140/161.305, 155.155/161.320, 155.170/161.335, 155.185/161.350,
155.200/161.365, 155.215/161.380, 155.230/161.395, 155.245/161.410,
155.260/161.425, 155.275/161.440, 155.290/161.455, 155.305/161.470,
155.320/161.485, 155.335/161.500, 155.350/161.515, 155.365/161.530,
155.380/161.545, 155.395/161.560

Also see, §§ 88.639-88.643 for geographic restrictions for certain frequencies.

§ 88.1001 Control channels.

Each applicant for innovative shared use operations must specify one or two channel pairs from § 88.999 to be used for control signalling purposes for the assignment of voice/data frequencies. Control channels will be assigned on an exclusive basis.

§ 88.1003 Additional frequencies.

Any innovative shared use radio operations licensee may employ additional voice/data or control channels from Subpart D, provided that licensee has exclusivity or concurrence for trunking those channels. See § 88.445.

§ 88.1005 Eligibility.

Any entity, except a wire line telephone common carrier, that has

(a) At least **ten base stations**, as of the date of the application, in the regional market applied for; and,

(b) At least **$1,000,000 in sales** or expenditures in each of the past two years

is eligible for an innovative shared use radio operations license in a particular market. Innovative shared use licenses will be granted as licenses in the Specialized Mobile Radio Service.

§ 88.1007 Grant of additional applications.

(a) Channels from Subpart D may be used as part of an innovative shared use system provided that the innovative shared use licensee has **exclusivity** or concurrence for trunking (see § 88.445) those **additional channels**.

(b) If all innovative shared use operation control channel pairs in a market are licensed, **additional innovative shared use licenses** will be granted provided a majority of the existing Innovative Shared Used licensees in that market provide written concurrence.

§ 88.1009 Sharing requirements.

(a) All innovative shared used licensees must share the voice/data channels listed at § 88.999. **Cooperation** among licensees to make this sharing successful is required. The Commission may cancel a license if the Commission in its sole discretion, determines that the licensee has failed to cooperate with other licensees.

(b) Each innovative shared used radio operations licensee must guarantee that all other licensees can receive and properly interpret on a real-time basis all control signals used by it system. No licensee may charge a fee for or restrict interpretation of the control signal by other licensees. No licensee may use equipment for which the manufacturer, distributor, or any other third party charges a fee for or restricts **interpretation of the control signal** to any other licensee, manufacturer, or other third party.

(c) **In case of interference**, licensees should attempt to resolve the problem on their own or using a qualified third party. If complaints are

filed with the Commission, the last innovative shared use licensee to construct or modify a base station/channel will be required to correct the interference.

§ 88.1011 Application requirements.

(a) Applications for innovative shared use operations must **specify** the control channel and market requested.

(b) Each application must **include**

(1) A construction schedule;

(2) A plan to meet the spectrum efficiency requirements at § 88.1015;

(3) Proof that the applicant has sufficient financial resources to construct and operate the proposed system during the first license term; i.e., that the applicant has net current assets sufficient to cover estimated cost or a firm financial commentment sufficient to cover estimated costs. (See para. (c) of this section.)

(4) Proof that the eligibility requirements are met.

(c) Applicants relying on personal or internal resources for the showing required in paragraph (b)(3) of this section must submit independently audited financial statements certified within one year of the date of the application showing net current assets sufficient to meet estimated construction and operating costs. Applicants must also submit an unaudited balance sheet, current within 60 days of the date of submission, that clearly shows the continued availability of sufficient net current assets to construct and operate the proposed system, and a certification by the applicant or an officer of the applicant organization attesting to the validity of the balance sheet.

(d) Applicants submitting evidence of a firm financial commitment for the showing required in paragraph (b)(3) of this section must obtain the commitment from a **bona fide** commercially acceptable source, e.g., a state or federally chartered bank or savings and loan institution, other recognized financial institution, the financial arm of a capital equipment supplier, or an investment banking house. If the lender is not a state or federally chartered bank or savings and loan institution, other recognized financial institution, the financial arm of a capital equipment supplier, or an investment banking house, the lender must also demonstrate that it has funds available to cover the total commitments it has made. The lender's commitment shall contain a statement that the lender:

(1) Has examined the financial condition of the applicant including an audited financial statement, and has determined that the applicant is creditworthy:

(2) Has examined the financial viability of the proposed system for which the applicant intends to use the commitment; and

(3) Is willing to provide a sum to the applicant sufficient to cover the realistic and prudent estimated costs of construction of 40 percent of the system and operation of the system for the first five years of the license term; and

(e) **One per Market**. An applicant may not have any interest in another pending application for an innovative shared use radio operation license in that regional market.

§ 88.1013 Construction requirements.

(a) Innovative shared use licensees must construct at least **25 base stations** within five years of initial license grant.

(b) Within each regional market are a number of Metropolitan Statistical Areas (MSAs). Innovative shared use licensees must construct and place in operation:

(1) At least **4 base stations** in each MSA in § 88.1601 located in their regional market by the end of their first license term;

(2) Each voice/data frequency pair on at least one base station within their assigned region by the end of their first license term; and

(3) Each voice/data frequency pair at least three times in each MSA in § 88.1601 by the end of the second license term.

(c) By the end of each licensing term, each base station must **meet the spectrum efficiency standards** at § 88.1015.

(d) Licensees failing to meet any of the deadlines in this section:

(1) May not construct additional base stations;

(2) May not transfer their licenses;

(3) Are excluded from the concurrence requirements at § 88.1007(b).

§ 88.1015 Additional spectrum efficiency requirements.

(a) An innovative shared use operations licensee must construct and operate multiple base stations that **efficiently reuse channels** within each of the MSAs listed at § 88.1601 that are located in its regional market.

(b) By the end of each ten-year license term after the first license term, within each of the MSAs listed at § 88.1601, a licensee must employ a new or additional technology or technique that **expands voice/data capacity** by at

least 100 percent. Innovative shared use licensees failing to meet the requirements in this section will subject to the conditions at § 88.1013(d).

§ 88.1017 Licensing of specific base stations.

Innovative shared use radio operations licensees, except as specified in § 88.1019(a), do not have to modify their license each time a base station is constructed or modified, unless that station requires FAA clearance, as specified in Part 17 of our rules at §§ 17.7-17.17 of this chapter, or that may have a significant environmental impact, as defined by § 1.1307 of this chapter, or that are located in a "quiet zone", as defined by § 88.317.

§ 88.1019 Supplemental reports.

(a) **General Status Report**. Every two years, or when the number of new base stations or substantially altered base stations exceeds 25, the innovative shared use operations licensee must submit a progress report containing information on the status of construction, technology and business, including new base station information, changes in technology at specific sites and the average number of mobiles using the system over the past 6 months. For purposes of this section, a substantial alteration to a base station includes a change in location, technology, the addition of 25 or more channels listed at § 88.999, and the addition of any channel listed in Subpart D.

(b) **Technology Report**. Three years prior to the end of each license term, each innovative shared use operation licensee must submit a report to the Private Radio Bureau on how they intend to meet the requirements at 88.1015(b).

MUTUAL AID OPERATIONS

§ 88.1029 Mutual aid operations.

(a) Public Safety licensees are authorized to use mobile and/or portable units on the **frequencies** 39.46, 45.86, 45.88, 154.475, 154.480, and 220.8025-220.8475/221.8025-221.8475 MHz throughout the United States, its territories, and possessions to transmit: communications relating to the immediate safety of life; or communications to facilitate interoperability between public safety entities.

(b) Licenses for **base stations** are required and are available only to Public Safety Radio Service eligibles. Communications on these channels that do not relate to the immediate safety of life or to communications interoperability between public safety entities may only be conducted on a secondary, non-interference basis to such communications.

(c) Also see § 88.227 for special separation requirements for the frequencies 220.8025-220.8475/221.8025-221.8475 MHz.

(d) Additionally, 866.0125, 866.5125, 867.0125, 867.5125 and 868.0125 MHz are available for mutual aid purposes as defined in Gen. Docket No. 87-112. See § 88.833.

PAGING OPERATIONS

§ 88.1059 Paging operations.

Sections 88.1061-1079 govern the assignment and operation of one-way paging operations.

§ 88.1061 Paging channel bandwidths.

Paging only frequencies in the 150-174 MHz band refer to wideband channels 25 kHz wide, i.e. equivalent to five standard mobile frequency channels. Paging frequencies in the 450-470 MHz band refer to wideband channels 25 kHz wide, i.e. equivalent to four standard mobile frequency channels. These paging frequencies are exempt from spectrum efficiency requirements.

§ 88.1063 Paging frequencies.

(a) **Non-Commercial Radio Service Paging.**

(1) These frequencies are assigned **only for one-way paging** communications to mobile receivers.

35.64, 35.68, 43.68, 152.0075, 157.450, 163.250, 929.0125, 929.0375, 929.0625, 929.0875, 929.1125, 929.1375, 929.1625, 929.1875, 929.2125, 929.2375, 929.2625, 929.2875, 929.3125, 929.3375, 929.4875, 929.5125, 929.5375, 929.5625, 929.5875, 929.6125 MHz

The frequencies 929.2625 and 929.4875 MHz are available only for use in multi-area paging systems.

(2) **Secondary alert-paging.** A licensee regularly conducting two-way communication operations on frequencies below 174 MHz may, on a secondary basis, also transmit one-way alert-paging signals to ambulance and rescue squad personnel.

(3) **Puerto Rico and the Virgin Islands.** In addition, the frequencies 150.830, 150.920, 151.070, 151.190 and 151.310 MHz are also available in Puerto Rico and the Virgin Islands for one-way paging communications to mobile receivers.

(b) **General Pool.** These frequencies are assigned only for one-way paging communications to mobile receivers and are available in the SMR and other radio services.

152.480, 154.625, 157.740, 158.460, 462.750, 462.775, 462.800, 462.825, 462.850, 462.875, 462.900, 462.925, 465.000, 929.3625, 929.3875, 929.4125, 929.4375, 929.4625, 929.6375, 929.6625, 929.6875, 929.7125, 929.7375, 929.7625, 929.7875, 929.8125, 929.8375, 929.8625, 929.8875, 929.9125, 929.9375, 929.9625, 929.9875

The frequencies 929.7625 and 929.9875 MHz are available for use in multi-area paging systems.

(c) **Public Safety Radio Service**. Paging operations may be authorized on a secondary basis on frequencies below 50 MHz listed at § 88.613.

(d) Paging operations are permitted in the **806-824/851-869 MHz and 896-901/935-940 MHz bands** by licensees who have been authorized a channel(s) on an exclusive basis.

(e) Systems authorized in the **220-222 MHz band** may only be used for paging transmissions ancillary to land mobile use. Paging-only operations are not permitted in this band.

(f) Paging operations are permitted on a secondary basis for channels in Subpart D in the **150-174 and 450-470 MHz bands** if the licensee has **written concurrence** from all co-channel base station licensees located within 113 km (70 mi), or the licensee has **written concurrence** from all co-channel base station licensees located within 80 km (50 mi) and all co-channel base station licensees located between 113 km (70 mi) and 80 km (50 mi) whose stations **exceed** the power limitation of § 88.429.

§ 88.1065 Multi-area paging systems.

Applicants requesting a multi-area paging frequency (929.2625, 929.4875, 929.7625, or 929.9875 MHz) must operate paging systems on this frequency in at least three separate geographic areas within eight months of the date of authorization. If at the end of eight months, systems have not been constructed in three separate geographic areas, authorization cancels automatically. An applicant authorized for multi-area service may also provide local service on this frequency in the authorized areas.

§ 88.1067 Power limitations.

With the following exceptions, ERP is limited to the relevant limits at § 88.429.

(a) Use of the frequencies **152.480 and 157.740 MHz** is limited to 300 watts output power.

(b) Use of the frequencies **154.625, 157.450 and 158.460 MHz** is limited to 20 watts output power.

(c) Use of the frequency **465.000 MHz** is limited to 35 watts output power.

§ 88.1069 Interservice use in the 929-930 MHz band.

Except for the channels available for multi-area operation, the Non-Commercial Radio Service paging channels in the 929-930 MHz band channels listed in § 88.1063(b) are available for private carrier operations if:

(a) There are **no satisfactory frequencies** available among the 929-930 MHz general pool and,

(b) There are **no users authorized** on the frequency in the proposed area of operation.

§ 88.1079 Paging frequencies for the physically handicapped.

(a) **Availability.** The frequencies 35.02 and 43.64 MHz will be assigned to handicapped individuals as defined in (b), or to the parents or guardians of persons under 18 years eligible under (b), or institutions devoted to the care or training of those persons. The initial application from a person claiming eligibility under paragraph (b) must be accompanied by a statement from a physician attesting to the condition of the applicant or the applicant's child (or ward in case of guardianship).

(b) **Handicap definitions.**

(1) Any person having a hearing deficiency such that average hearing threshold levels are 90 dB above ANSI (American National Standards Institute) 1969 or ISO (International Standards Organization) 1964 levels and such other persons who submit medical certification of similar hearing deficiency.

(2) Any person having visual acuity corrected to no better than 20/200 in the better eye or having a field of vision of less than 20 degrees.

(3) Any person, who, through loss of limbs or motor function, is confined to a wheelchair, or is nonambulatory.

(4) Any person who is actively awaiting organ transplants.

(c) **Authorization limitations.**

(1) Only A1A, A1D, A2B, A2D, F1B, F2B, F2D, G1B, G1D, G2B, G2D emissions will be authorized.

(2) For 35.02 and 43.64 MHz, output power may not exceed 3 watts and 10 watts, respectively.

(3) For 43.64 MHz, antennas having gain greater than 0 dBd will not be authorized. Transmissions must not exceed two seconds duration.

(4) 35.02 MHz is shared with General Category users under Subpart D.

§ 88.1089 Travelers' information stations (TIS).

Travelers' Information Stations transmit non-commercial information on traffic and road conditions, traffic hazard and traveler advisories, directions, availability of lodging, rest stops and service stations, and descriptions of local points of interest. Sections 88.1091-88.1097 govern TIS.

§ 88.1091 TIS frequencies.

(a) The frequencies **530 through 1700 kHz** in 10 kHz increments may be assigned for the operation of Travelers' Information stations.

(b) TIS will be authorized on a **secondary basis** to AM broadcast station operation. TIS applicants must protect broadcast assignments in the 535-1605 kHz band and allotments in the 1605-1705 kHz band.

§ 88.1093 Eligibility.

The frequencies may be assigned for the operation of TIS to entities eligible for the Public Safety Radio Service, plus park districts and authorities.

§ 88.1095 Application requirements.

Each application for a station or system must be accompanied by:

(a) **Non-interference basis.** A statement certifying that the transmitting site of the TIS will be located at least 15 km (9.3 mi) measured orthogonally, outside the measured 0.5 mV/meter daytime contour of any AM broadcast station operating on a first adjacent channel or at least 130 km (80.6 mi) outside the measured 0.5 mV/m daytime contour (0.1 mV/m for Class A stations) of any AM broadcast station operating on the same channel, or, if nighttime operation is proposed, outside the theoretical 0.5 mV/m-50% nighttime skywave contour of a U.S. Class A station. If the measured contour is not available, then the calculated 0.5 mV/m field strength contour is acceptable. These contours are available for inspection at the concerned AM broadcast station and FCC offices in Washington, D.C.

(b) In consideration of possible **cross-modulation and inter-modulation** interference effects which may result from the operation of a TIS in the vicinity of an AM broadcast station on the second or third adjacent channel, the applicant must certify that he has considered these possible interference effects and, to the best of his knowledge, does not foresee harmful

interference occurring to broadcast stations operating on second or third adjacent channels.

(c) A **map** showing the geographic location of each transmitter site and an estimate of the signal strength at the contour of the desired coverage area. For a cable system, the contour to be shown is the estimated field strength at 60 m (197 ft) from any point on the cable. For a conventional radiating antenna, the estimated field strength contour at 1.5 km (0.93 mi) must be shown. A contour map comprised of actual on-the-air measurements must be submitted to the Commission within 60 days after station authorization or completion of station construction, whichever occurs later. A sufficient number of points must be chosen at the specified distances (extrapolated measurements are acceptable) to adequately show compliance with the field strength limits.

(d) **Technical Data**. For each transmitter site, the transmitter's output power, the type of antenna utilized, its length (for a cable system), its height above ground, distance from transmitter to the antenna, and the elevation above sea level at the transmitting site.

§ 88.1095 Restrictions on TIS authorizations

(a) A TIS authorization may be **suspended, modified, or withdrawn** by the Commission without prior notice of right to hearing if necessary to resolve interference conflicts, to implement agreements with foreign governments, or in other circumstances warranting such action.

(b) The transmitting site of each TIS must be restricted to the immediate **vicinity of the following specified areas**: Air, train, and bus transportation terminals, public parks and historical sites, bridges, tunnels, and any intersection of a Federal Interstate Highway with any other Interstate, Federal, State, or local highway.

(c) A TIS will normally be authorized to use a **single transmitter**. However, a system of stations, with each station in the system employing a separate transmitter, may be authorized for a specified area provided sufficient need is demonstrated by the applicant.

(d) TIS may transmit **only noncommercial voice information** pertaining to traffic and road conditions, traffic hazard and travel advisories, directions, availability of lodging, rest stops and service stations, and descriptions of local points of interest. It is not permissible to identify the commercial name of any business establishment whose service may be available within or outside the coverage area of a TIS. However, to facilitate announcements concerning departures/arrivals and parking areas at air, train, and bus terminals, the trade name identification of carriers is permitted.

§ 88.1097 TIS technical standards.

(a) **Emission**. The use of 6K00A3E emission will be authorized, however NON emission may be used for purposes of receiver quieting, but only for a system of stations employing "leaky" cable antennas.

(b) A **frequency stability** of ± 20 Hz must be maintained.

(c) For a station employing a **cable antenna**, the following restrictions apply:

(1) The length of the cable antenna may not exceed 3.0 km (1.9 miles).

(2) Transmitter RF output power may not exceed 50 watts and will be adjustable downward to enable the user to comply with the specified field strength limit.

(3) The field strength of the emission on the operating frequency may not exceed 2 mV/m when measured with a standard field strength meter at a distance of 60 m (197 ft) from any part of the station.

(d) For a station employing a **conventional radiating antenna**(s) (**e.g.**, vertical monopole, directional array) the following restrictions apply:

(1) The antenna height above ground level must not exceed 15.0 m (49.2 ft).

(2) Only vertical polarization of antennas is permitted.

(3) Transmitter RF output power must not exceed 10 watts to enable the user to comply with the specified field strength limit.

(4) The field strength of the emission on the operating frequency must not exceed 2 mV/m when measured with a standard field strength meter at a distance of 1.50 km (0.93 mi) from the transmitting antenna system.

(e) For co-channel stations operating under different licenses, the following **minimum separation distances** apply:

(1) 0.50 km (0.31 mi) for the case when both stations are using cable antennas.

(2) 7.50 km (4.66 mi) for the case when one station is using a conventional antenna and the other is using a cable antenna.

(3) 15.0 km (9.3 mi) for the case when both stations are using conventional antennas.

(f) For a **system of co-channel transmitters** operating under a single authorization utilizing either cable or conventional antennas, or both, no minimum separation distance is required.

(g) An applicant desiring to locate a station that does **not comply with the separation** requirements of this section must coordinate with the affected station.

(h) Each transmitter in a TIS must be equipped with an **audio low-pass filter**, installed between the modulation limiter and the modulated stage. At audio frequencies between 3 kHz and 20 kHz this filter must have an attenuation greater than the attenuation at 1 kHz by at least:

60 log (f/3) decibels.

where "f" is the audio frequency in kHz. At audio frequencies above 20 kHz, the attenuation must be at least 50 decibels greater than the attenuation at 1 kHz.

RADIOLOCATION OPERATIONS

§ 88.1107 Radiolocation operations.

Sections 88.1109-88.1155 govern radiolocation operations. Radiolocation frequencies are used in operations to determine direction, distance, speed, or position for purposes other than navigation. The operation of Automatic Vehicle Monitoring (AVM) systems is governed by provisions set forth in § 88.1125.

§ 88.1109 Radiolocation frequencies.

(a) Frequencies in the following bands are **available for assignment** to radiolocation stations:

1715-1800 kHz, 1900-2000 kHz and 10,500-10,550 MHz

(b) In addition, the following frequencies are available on a **secondary basis** to stations licensed in various services or Federal Government Radiolocation operations.

Frequencies	Services or operations secondary to
70-90 kHz	International Fixed Service, Maritime Mobile Service
90-110 kHz	LORAN Navigation System (See footnote US104, section 2.106)
110-130 kHz	International Fixed Service, Maritime Mobile Service
3230-3400 kHz	Various Government, Aviation, International Fixed and Maritime Services (only available in as necessary in conjunction with frequencies in the 1715-1800 kHz band)
420 to 450 MHz	Government Radiolocation, Amateur Radio Service, Amateur-Satellite Service
2450 to 2483.5	Other fixed and mobile services, ISM equipment

2900 to 3100	Government Radiolocation, Maritime Radionavigation
3100 to 3300	Government Radiolocation
3300 to 3700	Government Radiolocation
5250 to 5350	Government Radiolocation
5350 to 5460	Government Radiolocation, Aeronautical Radiolocation
5460 to 5470	Government Radiolocation, Aeronautical Radiolocation, Maritime Radionavigation
5470 to 5600	Government Radiolocation, Maritime Radionavigation
5600 to 5650	Maritime Radionavigation, Government Meteorological Aids Service
8500 to 9000	Government Radiolocation, Airborne Doppler radars at 8800 MHz.
9000 to 9200	Government Radiolocation, Aeronautical Radiolocation
9200 to 9300	Government Radiolocation
9300 to 9500	Government Radiolocation, Aeronautical Radiolocation, Maritime Radionavigation. Also coordinated with Government Meteorological Aids Service
9500 to 10,000	Government Radiolocation
10,000 to 10,500	Government Radiolocation, Amateur Radio Service
13,400 to 14,000	Government Radiolocation
15,700 to 17,700	Government Radiolocation
24,050 to 24,250	Government Radiolocation
33,400 to 36,000	Government Radiolocation

(c) Radiolocation stations may also be authorized, on request, to use frequencies allocated exclusively to Federal Government stations, in those instances where the Commission finds, after consultation with the appropriate Federal Government agency or agencies, that such assignment is necessary or required for coordination with Government activities.

(d) Radiolocation operations will be authorized any type of emission upon a satisfactory showing of need.

§ 88.1111 Eligibility.

Applicants eligible in the General Category Pool are eligible for Radiolocation frequencies. See § 88.21.

§ 88.1113 Authorization restrictions.

(a) Devices designed to operate with a field strength equal to or less than 500 millivolts per meter at 3 m on frequencies between 2450 and 2500 MHz, or with field strength equal to or less than 2.5 volts per meter at 3 m on frequencies between 10,500 and 10,550 MHz and between 24,050 and 24,250 MHz, on a fundamental frequency, will not be licensed or type accepted for use under this part, but rather must comply with the requirements for field disturbance sensors as set forth in Part 15 of this chapter.

(b) Operations in the 10,000-10,500 MHz band are limited to survey operations and may not use pulsed emissions.

(c) Because of the operation of stations having priority on the same or adjacent frequencies in this or in other countries, frequency assignments in the bands **1715-1800, 1900-200 and 3230-3400 kHz** may either be unavailable or may be subject to certain technical or operational limitations. Therefore, applications for frequency assignments in these bands must include information concerning the transmitter output power; the type and directional characteristics of the antenna and the minimum hours of operation (GMT).

(d) **Speed measuring devices** will only be authorized below 2500 MHz, at 3100-3700, 5250-5350, 8500-9000, 9200-9300 MHz, and above 9500 MHz.

(e) The **10,500-10,550 MHz** band is restricted to radiolocation systems using type N0N emission.

(f) **420-450 MHz**.

(1) Pulse-ranging radiolocation stations in this band may be authorized along the shorelines of Alaska and the contiguous 48 states.

(2) Radiolocation stations using spread spectrum techniques may be authorized in the band 420-435 MHz for operation within the contiguous 48 states and Alaska. Such stations must identify themselves in accordance with § 88.489(e)(8).

(3) **Protected Sites**. Applicants should not expect to be accommodated if their area of service is:

(i) Within 160 km (100 mi) of 45°45' N, 70°32' W; 64°17' N, 149°10' W; or 48°43' N, 97°54' W;

(ii) Within 200 km (124 mi) of 32°38' N, 83°35' W; or 31°25' N, 100°24' W;

(iii) Within 240 km (150 mi) of 39°08' N., 121°26' W;

(iv) Within 320 km (200 mi) of 28°21' N, 80°43' W; 30°30' N, 86°30' W; or 43°09' N, 119°11' W; or

(v) In the state of Arizona; the state of Florida; portions of California and Nevada south of 37°10' N; or portions of Texas and New Mexico bounded by 31°45' N, 34°30' N, 104°00' W and 107°30' W.

(3) In the 420-435 MHz band, the maximum authorized bandwidth for non-Federal Government radiolocation stations using spread spectrum techniques is 15 MHz. The minimum authorized bandwidth is 10 MHz and the power of the spread spectrum emission must be evenly distributed over the band.

(g) Although station assignments will generally be limited to 1.0 kHz, systems in the 1900-2000 kHz band may use such bandwidth as is necessary for proper operation of the system provided that the field strength does not exceed 120 microvolts per meter per square root Hertz (120 uv/m/$Hz^{1/2}$) at 1.6

km (1 mi). Such **wideband operations** will be authorized on a secondary basis to stations operating within otherwise applicable technical standards.

(h) For frequencies in the **2450-2483.5 MHz, 10.5-10.55 GHz, and 24.65-24.25 GHz** bands, only unmodulated continuous wave (NON) emission may be employed and a frequency stability of at least 2000 parts per million must be maintained.

(i) For station assignments on frequencies in the 1715-1800 kHz band, maximum authorized **bandwidth** will not exceed 2 kHz.

(j) Except for the 1900-1950 kHz band, radiolocation licensees must expect to **share** frequencies. In that band, each frequency assignment is on an exclusive basis within the primary service area to which assigned. The primary service area is the area where the signal intensities are adequate for radiolocation purposes from all stations in the radiolocation system of which the station in question is a part; that is, the primary service area of the station coincides with the primary service area of the system. The normal minimum geographical separation between stations of different licensees will be at least 1931 km (1200 mi) when the stations are operated on the same frequency or on different frequencies separated by less than 1.0 kHz. Where geographical separation of less than 1931 km (1200 mi) is requested under these circumstances, it must be shown that the desired separation will result in a protection ratio of at least 20 decibels throughout the primary service area of other stations.

(k) Above 2900 MHz, radiolocation equipment using pulse modulation must meet the following **frequency stability**: the frequency at which maximum emission occurs must be within the authorized frequency band and must not be closer than 1.5/T MHz to the upper and lower limits of the authorized frequency band, where T is the pulse duration in microseconds.

(l) Radiolocation stations operating in the 70-90 kHz or 110-130 kHz bands may operate with a **frequency stability** of 100 ppm.

(m) A licensee in the Public Safety Radio Service may operate radio units for the purpose of determining distance, direction, speed, or position by means of a radiolocation device on any radiolocation frequency without specific authorization from the Commission, provided all other applicable rule requirements are satisfied.

§ 88.1115 Power limitations.

Radiolocation is generally restricted to the power limitations at § 88.429 except:

(a) In the frequencies **1715-1800 and 1900-2000 kHz**, output power must not exceed 375 watts.

(b) In the **420-450 MHz** band, stations using spread spectrum techniques are limited to a maximum output power of 50 watts.

(c) In the frequencies 10,000-10,500 MHz, power may not exceed 5 watts into the antenna.

(d) In the frequencies 10,500-10,550 MHz, power may not exceed 40 watts into the antenna.

§ 88.1125 Automatic vehicle monitoring (AVM) systems.

(a) These provisions authorize the licensing of automatic vehicle monitoring (AVM) systems that utilize nonvoice radio techniques to determine the location of vehicles. Authority is also provided for the transmission of voice and/or nonvoice messages relating to vehicles being located.

(b) The use of F1D, F2D, F3E, G1D, G2D, G3E, or P0N emissions may be authorized for operation of transmitters in AVM systems. For pulsed emission, the letters "K, L, M, Q, V, W or X" may be used in place of the letter "P"

(c) Frequencies for AVM operations are assignable as follows:

(1) Licensees for pulse-ranging AVM systems, requiring 8 MHz bandwidth may be authorized in the 904-912 MHz or 918-926 MHz band provided that:

(i) A licensee will not be assigned a second frequency band in the same geographic area until showing is made that the frequency band already assigned is being used to provide location data for not less than 5,000 vehicles.

(ii) Operations must not cause interference to Federal Government stations that operate in these bands and must tolerate interference from industrial, scientific, and medical (ISM) devices and from government stations that operate in these bands.

(2) AVM systems requiring bandwidths not exceeding 1 MHz may be authorized in the 903-904 MHz or 926-927 MHz bands on a developmental basis in accordance with § 88.1401.

(3) Applicants requiring not more than 25 kHz bandwidth per frequency in the 25-50 MHz, 150-170 MHz, and 450-512 MHz bands may either utilize base-mobile frequencies currently assigned the applicant, or be assigned base-mobile frequencies available in the service in which eligibility has been established, provided that:

(i) For transmission between vehicles and base stations, each frequency in a single-frequency mode of operation will provide location data for approximately 200 vehicles, or both frequencies in a two-frequency mode of operation will provide location data for approximately 400 vehicles, except that for paired frequencies in the 450-512 MHz band, the requirement is that location data be provided for approximately 200 vehicles for each frequency pair; and a showing is made that 50 percent of the vehicles will be in operation within the system by the end of the second year of the initial license term, and 70 percent will be in operation within the system by the end of the initial license term; except that if these vehicle loading standards

will not be met, frequencies will be assigned only on a secondary noninterference basis to any authorized radiotelephony operation.

(ii) The minimum separation between a proposed AVM station and the nearest co-channel base station of another licensee operating a voice system is 120 km (75 mi) for a single frequency mode of operation or 56 km (35 mi) for a two-frequency mode of operation. Where the minimum mileage separation cannot be achieved, agreement to the use of F1D, F2D, G1D, G2D or P0N emission must be received from all existing co-channel licensees using voice emissions within the applicable mileage limits. If there is interference with voice operations and required agreement was not received, or operation was authorized on a secondary noninterference basis, the licensee of the AVM system is responsible for eliminating the interference.

(iii) Additional frequencies under paragraph (c)(3) of this section will not be assigned to the same licensee in the same geographic area until each of such licensee's frequencies for AVM operation is shown to accommodate not less than 90 percent of the frequency loading requirements specified in paragraph (c)(3) of this section.

(d) Each application to license an AVM system must include the following **supplemental information**:

(1) For wideband frequency operation, the necessary or occupied bandwidth of emission whichever is greater.

(2) The data transmission characteristics as follows:

(i) The vehicle location update rates;

(ii) Specific transmitter modulation techniques used;

(iii) For codes and timing scheme: A table of bit sequences and their alphanumeric or indicator equivalents, and a statement of bit rise time, bit transmission rates, bit duration, and interval between bits;

(iv) A statement of amplitude-versus-time of the interrogation and reply formats, and an example of a typical message transmission and any synchronizing pulses utilized.

(3) A plan to show implementation schedule during the initial license term.

(e) **Technical standards**.

(1) AVM stations authorized for operation below 512 MHz must comply with the technical standards applicable to the frequency band prescribed in this chapter, including the requirement for type acceptance of equipment used.

(2) The output power for AVM stations authorized for operation above 512 MHz is 1 kw PEP for pulse ranging systems and 300 watts for non-pulse systems.

(3) Transmitters to be operated at signposts, or from vehicles to signposts for location signaling purposes may be employed with output power not to exceed 250 milliwatts, and their operation is secondary to regular co-channel operations on the frequency being utilized.

(4) The Commission, on a case-by-case basis, may impose additional appropriate technical requirements to assure efficient and effective frequency utilization.

(f) AVM stations are exempted from the identification requirements of § 88.489; however, the Commission may impose automatic **station identification** requirements when determined to be necessary for monitoring and enforcement purposes.

§ 88.1135 Wildlife tracking operations.

A licensee in the Public Safety Radio Service may use, without a specific authorization from the Commission, transmitters on the frequencies indicated below in connection with wildlife tracking and/or telemetry and in connection with official forestry-conservation activities. Such use will be on a secondary basis and must not cause harmful interference to services of other licensees operating on regularly assigned frequencies. The provisions of §§ 88.405 and 88.489 will not apply to transmitters complying with this section. To be eligible for operations in this manner, the transmitter must comply with all of the following requirements.

(a) The carrier **frequency** must be within the bands of:

31.17-31.19, 31.21-31.23, 31.25-31.27, 31.29-31.31, 31.33-31.35, 31.37-31.39, 31.41-31.43, 31.45-31.47, 31.49-31.51, 31.53-31.55, 31.57-31.59, 31.61-31.63, 31.65-31.67, 31.69-31.71, 31.73-31.75, 31.77-31.79, 31.81-31.83, 31.85-31.87, 31.89-31.91, 31.93-31.95, 31.97-31.99, 44.63-44.65, 44.67-44.69, 44.71-44.73, 44.75-44.77, 44.79-44.81, 44.83-44.85, 44.87-44.89, 44.91-44.93, 44.95-44.97, 44.99-45.01, 45.03-45.05, 151.145-151.475, 159.225-159.465 MHz

The carrier frequency must be maintained within 50 ppm of the frequency of operation. Use on assigned channel center frequencies is not required.

(b) The emitted signal must be **non-voice** modulation (A1D, A2D, F1D, or F2D emission).

(c) The maximum occupied **bandwidth**, containing 99 percent of the radiated power, must not exceed 0.25 kHz.

(d) The transmitter **output power** must not exceed a mean power of 5 mW nor may any peak exceed 100 mW peak power, as measured into a permanently attached antenna; or if the transmitter and antenna combination are contained in a sealed unit, the field strength of the fundamental signal of the transmitter and antenna combination must not exceed 0.29 V/m mean or 1.28 V/m peak when measured at a distance of 3 meters.

§ 88.1145 Stolen vehicle recovery systems.

(a) The **frequency** 173.075 MHz is available for stolen vehicle recovery systems on a shared basis with the Federal Government. Stolen vehicle recovery systems are limited to recovering stolen vehicles and are not authorized for general purpose vehicle tracking or monitoring.

(b) **Power Limitations**. Mobile transmitters operating on this frequency are limited to 2.5 watts power output and base transmitters are limited 300 watts ERP.

(c) **Technical Limitations**. Transmissions from mobiles must be limited to 200 milliseconds every 10 seconds, except that when a vehicle is being tracked actively, transmissions may be increased to 200 milliseconds every second. Transmissions from base stations will be limited to a total time of 1 second every minute.

(d) **Authorization Limitations**. Applications for base stations operating on this frequency require coordination with the Federal Government. Applicants must perform an analysis for each base station located within 169 km (105 mi) of a TV Channel 7 transmitter of potential interference to TV Channel 7 viewers. Such stations will be authorized if the applicant has limited the interference contour to fewer than 100 residences or if the applicant: shows that the proposed site is the only suitable location; develops a plan to control any interference caused to TV reception from the operations; and agrees to make such adjustments in the TV receivers affected as may be necessary to eliminate interference caused by its operations. The licensee must eliminate any interference caused by its operation to TV Channel 7 reception within 30 days of the time it is notified in writing by the Commission. If this interference is not removed within the 30 day period, operation of the base station must be discontinued. The licensee is expected to help resolve all complaints of interference.

§ 88.1155 Radio tracking devices.

The frequencies indicated below may be used in connection with official police activities without specific authorization from the Commission, on a secondary basis provided such use does not cause harmful interference to services of other licensees operating on regularly assigned frequencies. To be eligible for operations in this manner, the transmitter must comply with all of the following requirements.

(a) The carrier **frequency** must be within the bands of

30.85-30.87, 30.89-30.91, 30.93-30.95, 30.97-30.99, 31.01-31.03, 31.05-31.07, 31.09-31.11, 31.13-31.15, 31.17-31.19, 31.21-31.23, 31.25-31.27, 31.29-31.31, 31.33-31.35, 31.37-31.39, 31.41-31.43, 31.45-31.47, 31.49-31.51, 31.53-31.55, 31.57-31.59, 31.61-31.63, 31.65-31.67, 31.69-31.71, 31.73-31.75, 31.77-31.79, 31.81-31.83, 31.85-31.87, 31.89-31.91, 31.93-31.95, 31.97-32.00, 33.00-33.03, 33.05-33.07, 33.41-34.00, 37.00-37.43, 37.89-38.00, 39.00-40.00, 42.00-42.91,

44.61-45.91, 45.93-45.95, 45.97-45.99, 46.01-46.03, 46.05-46.60, 47.00-47.41, 150.995-151.490, 153.740-154.445, 154.635-155.195, 155.415-156.250, 158.715-159.465, 453.0125-453.9875, 458.0125-458.9875, 460.0125-460.5125, 460.5625-460.6375, 462.9375-462.9875, 465.0125-465.5125, 465.5625-465.6375, 467.9375-467.9875

and must be maintained within 50 parts per million of the frequency of operation. Use on assigned channel center frequencies is not required.

(b) The emitted signal must be **non-voice** modulation (type PO emission).

(c) The maximum occupied **bandwidth**, containing 99 percent of the radiated power, must not exceed 2.0 kHz.

(d) The transmitter **output power** must not exceed a mean power of 30 mW nor any peak exceed 1 watt peak power, as measured into a 50 ohm resistive load, except, if the transmitter has a permanently attached antenna or the transmitter and antenna combination is contained in a sealed unit, the field strength of the fundamental signal of the transmitter and antenna combination must not exceed 0.4 V/m mean or 2.3 V/m peak when measured at a distance of 3 meters.

(e) The transmitter must automatically limit the transmission time to no more than 10 days.

FIXED OPERATIONS

§ 88.1171 Fixed operations.

Sections 88.1175-1283 govern operational fixed use under this part.

§ 88.1175 Control station links.

Control stations associated with mobile relay stations will be authorized only on the assigned frequency of the associated mobile station.

§ 88.1179 Secondary fixed operations.

Fixed operations may, subject to the following conditions, be authorized on a secondary basis for signaling, ancillary data and alarm operations on a licensee's mobile service frequency(ies) above 25 MHz within the area normally covered by the licensee's mobile system. Voice signaling will be permitted only by police agencies and licensees with exclusivity or concurrence of co-channel licensees.

(a) The output **power** must not exceed 30 watts at the remote site.

(b) The **maximum duration** of any non-voice signaling transmission must not exceed 2 seconds and must not be repeated more than 3 times. Signaling

transmissions may be staggered at any interval or may be continuous. For police agencies, the maximum duration of any voice signaling transmission must not exceed 6 seconds and must not be repeated more than 3 times.

(c) Systems employing **automatic interrogation** must be limited to non-voice techniques and may not be activated for this purpose more than 10 seconds out of any 60 second period. This 10 second time frame includes both transmit and response times.

(d) Automatic means must be provided to **deactivate the transmitter** in the event the carrier remains on for a period in excess of 3 minutes or if the transmission for the same signaling function is repeated consecutively more than five times.

(e) Fixed stations authorized pursuant to the provisions of this section are **exempt from the requirements** of §§ 88.95(b), 88.489.

(f) **Base, mobile, or mobile relay stations** may transmit secondary signaling transmissions to receivers at fixed locations subject to the conditions set forth in this section.

(g) Under the provisions of this section, a mobile service frequency may **not be used exclusively** for secondary signaling. The use of secondary signaling will not be considered in whole or in part as a justification for authorizing additional frequencies in a licensee's land mobile radio system.

(h) **Exemptions with Trunking, Exclusivity or Concurrence**. Licensees of mobile/base station systems above 150 MHz are exempt from the requirements at (b) and (c) if the system is trunked, the licensee has **written concurrence** from all co-channel base station licensees located within 113 km (70 mi), or the licensee has **written concurrence** from all co-channel base station licensees located within 80 km (50 mi) and all co-channel base station licensees located between 113 km (70 mi) and 80 km (50 mi) whose stations **exceed** the power limitation of § 88.429.

§ 88.1189 Fixed operations in the 72-76 MHz band.

(a) The following **frequencies** in the band 72-76 MHz may be used for fixed operations:

MHz: 72.02, 72.04, 72.06, 72.08, 72.10, 72.12, 72.14, 72.16, 72.18, 72.20, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.34, 72.36, 72.38, 72.40, 72.42, 72.46, 72.50, 72.54, 72.58, 72.62, 72.64, 72.66, 72.68, 72.70, 72.72, 72.74, 72.76, 72.78, 72.80, 72.82, 72.84, 72.86, 72.88, 72.90, 72.92, 72.94, 72.96, 72.98, 75.42, 75.46, 75.50, 75.54, 75.58, 75.62, 75.64, 75.66, 75.68, 75.70, 75.72, 75.74, 75.76, 75.78, 75.80, 75.82, 75.84, 75.86, 75.88, 75.90, 75.92, 75.94, 75.96, 75.98.

(b) **Authorization Limitations**. Because of the potential for interference to the reception of TV Channels 4 and 5 by broadcast television sets and video

recorders, assignments of the 72-76 MHz channels are subject to the following conditions:

(1) Assignments of 72-76 MHz channels for use within 129 km (80 mi) of a full service TV station transmitting on Channel 4 or 5 are subject to the condition that the licensee must **eliminate any harmful interference** caused to reception on TV Channels 4 or 5. If the Commission notifies the licensee of an interference problem and the licensee does not resolve the problem within 90 days of such notification, operation of the interfering 72-76 MHz fixed station must be immediately discontinued.

(2) 72-76 MHz channels may be assigned for use **within 16 km** (10 mi.) of a full service TV station transmitting on TV Channel 4 or 5 under a developmental authorization, pursuant to § 88.1401. However, for use within 50 m (164 ft) of a TV station transmitting on TV Channel 4 or 5, 72-76 MHz channels may be assigned under a regular authorization, rather than a developmental authorization.

§ 88.1203 Fixed operations in the 150-174 MHz and 450-470 MHz bands.

(a) **Available Frequencies.** Any frequency available in Subpart D in the 150-174 and 450-470 MHz bands, may be assigned for fixed operations, on a secondary basis to land mobile operations.

(b) **Power Limitations.** Output power may not exceed the power limitation for mobile operations on that frequency. In addition, output power may not exceed 20 watts except outside 161 km (100 mi) of the centers of the top 75 markets as listed in § 88.1601.

(c) **Assignment Limitations.**

(1) Applications must include written concurrence from all exclusive use overlay licensees for the frequencies applied for, with base stations located within 80 km (50 mi) of any base station of the proposed fixed operation.

(2) To maintain the primacy of mobile operations, no such fixed operation will be approved for a frequency unless the applicant has concurrence from at least one relevant exclusive use overlay licensee as defined in para. (c)(1) of this section. Fixed use is secondary to land mobile operations and may not cause harmful interference to any existing or future land mobile stations.

(3) All such fixed systems are limited to a maximum of two frequencies and must employ directional antennas with a front-to-back ratio of at least 15 dB, except that omnidirectional antennas having unity gain may be employed for stations communicating with a minimum of three receiving locations encompassed in a sector of at least 160 degrees in azimuth. For two-frequency systems, the separation between transmit-receive frequencies is 5 MHz.

§ 88.1213 Power line carrier systems.

The frequencies 10-490 kHz are used to operate electric utility Power Line Carrier (PLC) systems on power transmission lines for communications essential to the reliability and security of electric service to the public, in accordance with Part 15 of this chapter. Any electric utility may operate PLC systems and must supply to a Federal Communications Commission/National Telecommunications and Information Administration recognized industry-operated entity, information on all existing, changes to existing, and proposed systems for inclusion in a data base. Such information must include the frequency, power, location of transmitter(s), location of receivers and other technical and operational parameters, that would characterize the system's potential both to interfere with authorized radio users, and to receive harmful interference from these users. In an agreed upon format, the industry-operated entity must inform the National Telecommunications and Information Administration and the Commission of these system characteristics prior to implementation of any proposed PLC system and must provide monthly or periodic lists with supplements of PLC systems. The Federal Communications Commission and National Telecommunications and Information Administration will supply appropriate application and licensing information to the notification activity regarding authorized radio stations operating in the band. PLC systems in this band operate on a noninterference basis to radio systems assigned frequencies by the NTIA or licensed by the FCC and are not protected from interference due to these radio operations.

§ 88.1243 Fixed use in the 476-494 MHz band in the Southern Louisiana-Texas Offshore Zone.

See § 88.791.

§ 88.1253 Fixed use in the Non-continental United States.

In the States of Alaska and Hawaii, and in areas outside the continental limits of the United States and the adjacent waters, the frequencies above 150.8 MHz that are listed elsewhere in this part as available for assignment to base stations or mobile stations in the Non-commercial Radio Service, are also available for assignment to fixed stations on a secondary basis, subject to the assignment limitations § 88.1203(c).

§ 88.1263 Radio call box operations.

The frequencies in the 72-76 MHz band listed in § 88.1189 may be assigned in the Public Safety Radio Service for operation of radio call boxes to be used by the public to request fire, police, ambulance, road service, and other emergency assistance, subject to the following conditions and limitations:

(a) Maximum transmitter power will be 1 watt output. The antenna and its supporting structure must not exceed 6.1 m (20 ft) in height above the ground.

(b) **Antenna** gain must not exceed zero dBd (referred to a half-wave dipole) in any horizontal direction. Only vertical polarization of antennas are permitted.

(c) Only non-voice **emissions** will be authorized.

(d) **Time Limitations.** Except for test purposes, each transmission must be limited to a maximum of two seconds and must not be repeated more than two times at spaced intervals within the following 30 seconds. Thereafter, the authorized cycle may not be reactivated for one minute. All transmitters must be furnished with an automatic means to deactivate the transmitter in the event the carrier remains on for a period in excess of three minutes. The automatic cutoff system must be designed so the transmitter can be only manually reactivated.

§ 88.1273 Disaster communications between 2 and 10 MHz.

(a) **Available Frequencies.** The frequencies available for disaster communications are listed in the Commission's Public Notice 2419, dated February 26, 1982, available from the Private Radio Bureau, Licensing Division, Gettysburg, PA 17325. Applicants for such frequencies should contact the Division for frequency availability. Operations on these frequencies are secondary to foreign operations.

(b) **Eligibility.**

(1) Only the central governments of the fifty individual States, the District of Columbia, and the insular areas of the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the unincorporated territories of American Samoa, Guam and the United States Virgin Islands are eligible to be licensed to use this spectrum, and then only for disaster communications purposes.

(2) Authority will be extended to stations to operate on the frequencies between 2 and 10 MHz only to provide communications circuits in emergency and/or disaster situations, where safety of life and property are concerned, or to provide standby and/or backup communications circuits to regular domestic communications circuits that have been disrupted by disasters and/or emergencies.

(c) **Application Requirements.** Applicants must submit disaster communications plans containing the following information:

(1) The number of frequencies in each band, and the type of emission required by the applicant;

(2) The adjacent states and insular areas expected to be communicated with during a regional disaster or emergency;

(3) The point of contact for emergencies involving more than one state or insular area;

(4) The common frequency band(s) and number of frequencies in each band required for interstate communication, and the point(s) of contact for these adjacent states or insular areas;

§ 88.1283 Long distance communications on frequencies between 2 MHz and 25 MHz.

(a) **Available Frequencies.** The use of any particular frequency between 2 and 25 MHz is limited to those frequencies falling within the bands allocated to the fixed and land mobile services as indicated in § 2.106 of the Commission's Rules and Regulations. Available frequencies are listed in the Commission's Public Notice 4126, dated August 12, 1988, available from the Private Radio Bureau, Licensing Division, Gettysburg, PA 17325. Operations on these frequencies are secondary to foreign operations.

(b) **Eligibility.** Authority to operate on the frequencies between 2 and 25 MHz will only be extended to stations that provide:

(1) Communications circuits to support operations that are highly important to the national interest and where other means of telecommunication are unavailable;

(2) Standby and/or backup communications circuits to regular domestic communications circuits that have been disrupted by disasters or emergencies.

§ 88.1293 Telemetry operations.

The use of telemetry is authorized on fixed use frequencies listed in this subpart, any of the low power frequencies listed in section § 88.907 or on any frequency with an exclusive licensee or with an EUO licensee. Telemetry operations are exempt from station identification requirements. (See 88.489.)

§ 88.1295 Telemetry in the 154 MHz and 173 MHz bands.

(a) **Available frequencies.** The use of the frequencies 154.45625, 154.46375, 154.47125, 154.47875, 173.20375, 173.2100, 173.2375, 173.2625, 173.2875, 173.3125, 173.3375, 173.3625, 173.3900, 173.39625 MHz is restricted to fixed and mobile use for telemetry and remote control. All operation is on a secondary basis to adjacent channel land mobile operations.

(b) **Technical restrictions.**

(1) Except for 173.2100 and 173.3900 MHz, for FM transmitters the sum of the highest modulating frequency and the amount of frequency deviation may not exceed 2.8 kHz and the maximum frequency deviation may not exceed 2.5 kHz. For AM transmitters the highest modulating frequency may not exceed 2.0 kHz. The carrier frequency must be maintained within 5 ppm and the authorized

bandwidth may not exceed 6 kHz. A1A, A1D, A2B, A2D, F1B, F1D, F2B, F2D, G1B, G2B or G2D emission may be authorized.

(2) For 173.2100 and 173.3900 MHz, for FM transmitters the sum of the highest modulating frequency and the amount of frequency deviation may not exceed 1.7 kHz and the maximum deviation may not exceed 1.2 kHz. For AM transmitters the highest modulating frequency may not exceed 1.2 kHz. The carrier frequency must be maintained within 5 ppm and the authorized bandwidth may not exceed 3 kHz. A1A, A1D, A2B, A2D, F1B, F1D, F2B, F2D, G1B, G2B or G2D emission may be authorized.

(c) **Power and antenna height restrictions.** Maximum power is 20 watts ERP for fixed stations and 2 watts ERP for mobile stations. Fixed stations must use directional antennas having a front-to-back ratio of at least 20 dB. Omnidirectional antennas having unity gain may be employed for stations communicating with at least three receiving locations separated by 160° of azimuth. The height of the antenna systems may not exceed 15.2 m (50 ft) above ground.

(d) **Multiple Address Use of 154.43275 MHz.** The frequency 154.43275 MHz is also available for assignment to multiple address fixed stations employing omnidirectional antennas used for power utility peak load shaving and shedding and to mobile stations used for the remote control of objects and devices. The maximum output power that may be authorized is 300 watts for fixed stations and one watt for mobile stations.

§ 88.1299 Low-power telemetry operations.

(a) Low-power mobile stations of 100 mW or less output power may be assigned any frequency separated by 3.125 kHz from a regularly assigned frequency in the 460.646875-460.878125 MHz and 465.646875-465.878125 MHz bands listed in Subpart D, for one-way, non-voice biomedical telemetry operations in hospitals, or in medical or convalescent centers.

(b) Low-power mobile stations of 10 mW or less output power may be assigned for telemetry operation on any frequency separated by 3.125 kHz from a regularly assigned frequency in the 450-470 MHz bands listed in Subpart D. Licensees need not obtain a separate authorization for such operation. Such operations will be on a secondary basis.

§ 88.1303 Telemetry in the 216-220 MHz and 1427-1435 MHz bands.

Frequencies in the 216-220 MHz and 1427-1435 MHz bands may be assigned to applicants under this part for telemetry operations. All such operations are secondary to Federal Government operations and the Interactive Video Data Service. Operation in the band 216-220 MHz is also secondary to the maritime mobile service, and operation in the band 1427-1429 MHz is also secondary to the space operation service (earth-to-space). Base stations authorized in these bands must be used to perform telecommand functions with associated mobile telemetering stations. Base stations may also command actions by the

vehicle itself, but will not be authorized solely to perform this function. Airborne use will not be authorized. Each application will be coordinated with the Federal Government and is subject to such technical and operational limitations as may be imposed by the government. Each application should include precise information concerning emission characteristics, transmitter frequency deviation, output power, type and directional characteristics, if any, of the antenna.

§ 88.1313 Geophysical operations tone or impulse signaling.

Geophysical operations may use tone or impulse signaling for purposes other than indicating failure of equipment or abnormal conditions subject to the following limitations:

(a) Use of tone or impulse signaling will be on a **secondary** basis.

(b) **Maximum duration** of a single nonvoice transmission is 3 minutes.

(c) **Frequency loading** resulting from the use of secondary tone or impulse signaling will not be considered, in whole or in part, as a justification for authorizing additional frequencies in the licensee's mobile service system.

(d) The maximum transmitter output **power** for tone or impulse transmissions is 50 watts.

(e) **Primary frequencies**. The frequencies 25.02, 25.06, 25.10, 25.14 and 25.18 MHz are available for assignment only to stations used for geophysical purposes.

§ 88.1323 Meteor burst communications.

Meteor burst communications may be authorized for the use of private radio stations only in Alaska subject to the following provisions:

(a) **Available Frequencies**. The frequencies 44.20 MHz and 45.90 MHz may be used for base and remote station operation, respectively, on a primary basis. The frequencies 42.40 MHz and 44.10 MHz may be used by base and remote stations, respectively, on a secondary basis to common carrier stations utilizing meteor burst communications.

(b) **Application Requirements**. New authorizations will be issued subject to the Commission's developmental grant procedure at § 88.1401. Prior to expiration of the developmental authorization, application Form 574 should be filed for issuance of a permanent authorization.

(c) **Authorization Limitations**.

(1) The maximum transmitter output power must not exceed 2000 watts for base stations and 500 watts for remote stations.

(2) Co-channel base stations of different licensees will be located at least 241 km (150 mi) apart. A remote station and a base station of different licensees must be located at least 150 miles apart if the remote units of the different licensees operate on the same frequency. Waiver of this requirement may be granted if affected users agree to a cooperative sharing arrangement.

(3) F1E, F7W, G1E or G7W emissions may be authorized.

(4) Station identification (see § 88.489) is required only for the base station.

§ 88.1333 Hydrological/meteorological data transmissions in the 169-172 MHz and 406-413 MHz bands.

(a) **Available Frequencies.** The following frequencies are available for transmitting hydrological or meteorological data:

169.425 MHz, 169.450, 169.475, 169.500, 169.525, 170.225, 170.250, 170.275, 170.300, 170.325, 171.025, 171.050, 171.075, 171.100, 171.125, 171.825, 171.850, 171.875, 171.900, 171.925, 406.125, 406.175, 409.675, 409.725, 412.625, 412.675, 412.725, 412.775

(b) **Authorization Limitations.**

(1) Use of these frequencies is on a secondary basis to Federal Government stations and the hydrological or meteorological data being transmitted must be made available on request to governmental agencies. Technical standards for these channels are those for Federal use, rather than Subpart C.

(2) Other provisions of this part notwithstanding, an operational fixed station operating on these frequencies must not communicate with any station in the mobile service unless written authorization to do so has been obtained from the Commission.

(3) Persons who desire to operate stations on these frequencies should communicate with the Commission for instructions concerning the procedure to be followed in filing formal application.

§ 88.1401 Developmental Operation

(a) **Showing required.**

(1) Except as provided in paragraph (b) of this section, each application for developmental operation must be accompanied by a showing that the program has reasonable promise of substantial contribution to the expansion or extension of the radio art, or is investigating new unexplored concepts in radio transmission and communications and that the public interest, convenience, and necessity will be served by the proposed operation.

(2) The provisions of paragraph (a) of this section do not apply to the frequencies listed in para. (c)(2) of this section.

(b) **Limitations on use**.

Stations used for developmental operation must conform to all appropriate technical and operating requirements of this part, unless specifically exempted in the instrument of authorization.

(c) **Frequencies available for assignment**.

(1) Stations engaged in developmental operation may be authorized to use a frequency or frequencies available in the service in which they propose to operate. The number of channels assigned will depend upon the specific requirements of the developmental program and the number of frequencies available in the particular geographic area where the station is to operate.

(2) In addition to the above, the following frequency ranges are available for developmental use only:

30.56-30.57, 31.99-32.00, 33.00-33.01, 33.99-34.00, 35.00-35.01, 35.99-36.00, 37.00-37.01, 37.99-38.00, 39.00-39.01, 39.99-40.00, 42.00-42.01, and 8400-8500 MHz

(d) **Interference**. The operation of any station engaged in developmental work must not cause harmful interference to the operation of stations regularly licensed under any part of the Commission's rules.

(e) **Special provisions**.

(1) The developmental program as described by the application for authorization must be followed unless the Commission directs otherwise.

(2) Where some phases of the developmental program are not covered by the general rules in this chapter and the rules in this part, the Commission may specify additional requirements or conditions as deemed necessary in the public interest, convenience, or necessity.

(3) The Commission may, from time to time, require a station engaged in developmental work to conduct special tests that are reasonable and desirable to the authorized developmental program.

(f) **Change or cancellation of authorization without hearing**. Every application for authority to engage in developmental operation must be accompanied by a statement signed by the applicant in which it is agreed that any authorization issued pursuant thereto will be accepted with the express understanding of the applicant that it is subject to change in any of its terms or to cancellation in its entirety at any time, upon reasonable notice but without a hearing, if, in the opinion of the Commission, circumstances should so require.

(g) **Report of operation**. A report on the results of a developmental program must be filed with and made a part of each application for renewal of authorization. In cases where no renewal is requested, the report must be filed within 60 days of the expiration of such authorization. Matters that the applicant does not wish to disclose publicly may be so labeled; they will be used solely for the Commission's information, and will not be publicly disclosed without permission of the applicant. The report must include comprehensive and detailed information on:

(1) The final objective.
(2) Results of operation to date.
(3) Analysis of the results obtained.
(4) Copies of any published reports.
(5) Need for continuation of the program.
(6) Number of hours of operation on each frequency.

This report is not required for use of the frequencies listed at para. (c)(2) of this section.

Subpart F - Miscellaneous

§ 88.1501 Combined Frequency List

This section lists frequencies available in the majority of the United States. For explanations of the limitations, see the section in Subpart D or E the frequency is listed. For channels listed in Subpart D (§§ 88.609-88.625), only the base station frequency is listed. Base station frequencies in the 220-221 MHz band are paired with a mobile-only frequency 1 MHz higher. Base station frequencies in the 450-455 and 460-465 MHz bands, unless otherwise indicated below, are paired with a mobile-only frequency 5 MHz higher. Base station frequencies in the 470-512 MHz band are paired with a mobile-only frequency 3 MHz higher. Base station frequencies in the 851-869 MHz band are paired with a mobile-only frequency 45 MHz lower. Base station frequencies in the 935-940 MHz band are paired with a mobile-only frequency 39 MHz lower. See §§ 88.801-88.841 for available frequencies above 800 MHz in areas less than 110 km (68.4 miles) from the U.S./Mexico border and less than 140 km (87 miles) from the U.S./Canada border.

Frequency(s)	Service	Limitations	Section Listed At
KILOHERTZ			
10-490	Non-Commercial	Power Line Carrier	88.1213
70-90	General Category	Radiolocation	88.1109
90-110	General Category	Radiolocation	88.1109
110-130	General Category	Radiolocation	88.1109
530-1700	Public Safety	Travellers' Information	88.1091
1630	Public Safety		88.613
1715-1800	General Category	Radiolocation	88.1109
1722	Public Safety	750 Watts	88.613
1730	Public Safety	750 Watts	88.613
1900-2000	General Category	Radiolocation	88.1109
2212	Public Safety	Secondary to Canada	88.613
2226	Public Safety	Secondary to Canada	88.613
2236	Public Safety	Secondary to Canada	88.613
2244	Public Safety		88.613
2292	Non-Commercial		88.617
2366	Public Safety	Secondary to Canada	88.613
2382	Public Safety		88.613
2390	Public Safety	Secondary to Canada	88.613
2398	Non-Commercial		88.617
2406	Public Safety		88.613
2430	Public Safety		88.613
2442	Public Safety		88.613
2450	Public Safety		88.613
2458	Public Safety		88.613
2482	Public Safety		88.613
2490	Public Safety	750 Watts	88.613
2726	Public Safety	State Guard	88.613
3201	Non-Commercial		88.617
3230-3400	General Category	Radiolocation	88.1109
4637.5	Non-Commercial		88.617

MEGAHERTZ

25.02	Non-Commercial	Geophysical	88.617
25.04	Non-Commercial	Oil Spill	88.617
25.06	Non-Commercial	Geophysical	88.617
25.08	Non-Commercial	Oil Spill, Secondary	88.617
25.10	Non-Commercial	Geophysical, Secondary	88.617
25.12	Non-Commercial		88.617
25.14	Non-Commercial	Geophysical	88.617
25.16	Non-Commercial		88.617
25.18	Non-Commercial	Geophysical	88.617
25.20	Non-Commercial		88.617
25.22	Non-Commercial		88.617
25.24	Non-Commercial		88.617
25.26	Non-Commercial		88.617
25.28	Non-Commercial		88.617
25.30	Non-Commercial		88.617
25.32	Non-Commercial		88.617
27.43	Non-Commercial	110 Watts	88.617
27.45	Non-Commercial	110 Watts	88.617
27.49	General Category	Itinerant	88.953
27.51	General Category	Low Power	88.907
27.53	General Category	Low Power	88.907
29.71	Non-Commercial		88.617
29.73	Non-Commercial		88.617
29.75	Non-Commercial		88.617
29.77	Non-Commercial		88.617
29.79	Non-Commercial		88.617
30.56-30.57	General Category	Developmental	88.1401
30.58	Non-Commercial		88.617
30.60	Non-Commercial		88.617
30.62	Non-Commercial		88.617
30.64	Non-Commercial	Perm. or Itinerant	88.617
30.66	Non-Commercial		88.617
30.68	Non-Commercial		88.617
30.70	Non-Commercial		88.617
30.72	Non-Commercial		88.617
30.74	Non-Commercial		88.617
30.76	Non-Commercial	110 Watts	88.617
30.78	Non-Commercial		88.617
30.80	Non-Commercial	110 Watts	88.617
30.82	Non-Commercial		88.617
30.84	General Category	Low Power	88.907
30.86	Non-Commercial		88.617
30.88	Non-Commercial	110 Watts	88.617
30.90	Non-Commercial		88.617
30.92	Non-Commercial	110 Watts	88.617
30.94	Non-Commercial		88.617
30.96	Non-Commercial	110 Watts	88.617
30.98	Non-Commercial		88.617
31.00	Non-Commercial	110 Watts	88.617
31.02	Non-Commercial		88.617
31.04	Non-Commercial	110 Watts	88.617

31.06	Non-Commercial		88.617
31.08	Non-Commercial		88.617
31.10	Non-Commercial		88.617
31.12	Non-Commercial		88.617
31.14	Non-Commercial		88.617
31.16	Non-Commercial	110 Watts	88.617
31.18	Public Safety	State Plans	88.613
31.20	Non-Commercial	110 Watts	88.617
31.22	Public Safety	State Plans	88.613
31.24	Non-Commercial	110 Watts	88.617
31.26	Public Safety	State Plans	88.613
31.28	Non-Commercial	Perm. or Itinerant	88.617
31.30	Public Safety	State Plans	88.613
31.32	Non-Commercial	Perm. or Itinerant	88.617
31.34	Public Safety	State Plans	88.613
31.36	Non-Commercial	Perm. or Itinerant	88.617
31.38	Public Safety	State Plans	88.613
31.40	Non-Commercial	Perm. or Itinerant	88.617
31.42	Public Safety	State Plans	88.613
31.44	General Category	Itinerant	88.953
31.46	Public Safety	State Plans	88.613
31.48	Non-Commercial	Perm. or Itinerant	88.617
31.50	Public Safety	State Plans	88.613
31.52	Non-Commercial	Perm. or Itinerant	88.617
31.54	Public Safety	State Plans	88.613
31.56	Non-Commercial	Perm. or Itinerant	88.617
31.58	Public Safety	State Plans	88.613
31.60	Non-Commercial	Perm. or Itinerant	88.617
31.62	Public Safety	State Plans	88.613
31.64	Non-Commercial	Perm. or Itinerant	88.617
31.66	Public Safety	State Plans	88.613
31.68	Non-Commercial	Perm. or Itinerant	88.617
31.70	Public Safety	State Plans	88.613
31.72	Non-Commercial	Perm. or Itinerant	88.617
31.74	Public Safety	State Plans	88.613
31.76	Non-Commercial	Perm. or Itinerant	88.617
31.78	Public Safety	State Plans	88.613
31.80	Non-Commercial	Perm. or Itinerant	88.617
31.82	Public Safety	State Plans	88.613
31.84	Non-Commercial	Perm. or Itinerant	88.617
31.86	Public Safety	State Plans	88.613
31.88	Non-Commercial	Perm. or Itinerant	88.617
31.90	Public Safety	State Plans	88.613
31.92	Non-Commercial	Perm. or Itinerant	88.617
31.94	Public Safety	State Plans	88.613
31.96	Non-Commercial	Perm. or Itinerant	88.617
31.98	Public Safety	State Plans	88.613
31.99-32.00	General Category	Developmental	88.1401
33.00-33.01	General Category	Developmental	88.1401
33.02	Non-Commercial		88.617
33.04	Non-Commercial		88.617
33.06	Non-Commercial		88.617
33.08	Non-Commercial		88.617
33.10	Non-Commercial		88.617
33.12	General Category	Low Power	88.907

33.14	General Category	Low Power	88.907
33.16	Non-Commercial	110 Watts	88.617
33.18	Non-Commercial		88.617
33.20	Non-Commercial		88.617
33.22	Non-Commercial		88.617
33.24	Non-Commercial		88.617
33.26	Non-Commercial		88.617
33.28	Non-Commercial		88.617
33.30	Non-Commercial		88.617
33.32	Non-Commercial		88.617
33.34	Non-Commercial		88.617
33.36	Non-Commercial		88.617
33.38	Non-Commercial		88.617
33.40	General Category	Low Power	88.907
33.42	Public Safety	Low Power	88.907
33.44	Public Safety		88.613
33.46	Public Safety	Mobile Only	88.613
33.48	Public Safety		88.613
33.50	Public Safety	Mobile Only	88.613
33.52	Public Safety		88.613
33.54	Public Safety	Mobile Only	88.613
33.56	Public Safety		88.613
33.58	Public Safety	Mobile Only	88.613
33.60	Public Safety		88.613
33.62	Public Safety	Mobile Only	88.613
33.64	Public Safety		88.613
33.66	Public Safety	Mobile Only	88.613
33.68	Public Safety		88.613
33.70	Public Safety		88.613
33.72	Public Safety		88.613
33.74	Public Safety		88.613
33.76	Public Safety		88.613
33.78	Public Safety		88.613
33.80	Public Safety		88.613
33.82	Public Safety		88.613
33.84	Public Safety		88.613
33.86	Public Safety		88.613
33.88	Public Safety		88.613
33.90	Public Safety		88.613
33.92	Public Safety		88.613
33.94	Public Safety		88.613
33.96	Public Safety		88.613
33.98	Public Safety		88.613
33.99-34.00	General Category	Developmental	88.1401
35.00-35.01	General Category	Developmental	88.1401
35.02	Non-Commercial	Physically Handicapped	88.1079
35.02	General Category	Low Power	88.907
35.04	General Category	Itinerant	88.953
35.06	Non-Commercial	110 Watts	88.617
35.08	Non-Commercial	110 Watts	88.617
35.10	Non-Commercial	110 Watts	88.617
35.12	Non-Commercial	110 Watts	88.617
35.14	Non-Commercial	110 Watts	88.617
35.16	Non-Commercial		88.617
35.18	Non-Commercial	110 Watts	88.617

35.28	Non-Commercial	Perm. or Itinerant	88.617
35.32	Non-Commercial	Perm. or Itinerant	88.617
35.36	Non-Commercial	Perm. or Itinerant	88.617
35.40	Non-Commercial	Perm. or Itinerant	88.617
35.44	Non-Commercial	Perm. or Itinerant	88.617
35.48	Non-Commercial	Perm. or Itinerant	88.617
35.52	Non-Commercial	Perm. or Itinerant	88.617
35.64	Non-Commercial	Paging	88.1063
35.68	Non-Commercial	Paging	88.1063
35.70	Non-Commercial		88.617
35.72	Non-Commercial		88.617
35.74	Non-Commercial		88.617
35.76	Non-Commercial		88.617
35.78	Non-Commercial		88.617
35.80	Non-Commercial		88.617
35.82	Non-Commercial		88.617
35.84	Non-Commercial		88.617
35.86	Non-Commercial		88.617
35.88	Non-Commercial	110 Watts	88.617
35.90	Non-Commercial	110 Watts	88.617
35.92	Non-Commercial	110 Watts	88.617
35.94	Non-Commercial	Perm. or Itinerant	88.617
35.96	Non-Commercial	Perm. or Itinerant	88.617
35.98	Non-Commercial	Perm. or Itinerant	88.617
35.99-36.00	General Category	Developmental	88.1401
36.25	Non-Commercial	Oil Spill Containment	88.965
37.00-37.01	General Category	Developmental	88.1401
37.02	Public Safety	Mobile Only	88.613
37.04	Public Safety		88.613
37.06	Public Safety		88.613
37.08	Public Safety		88.613
37.10	Public Safety		88.613
37.12	Public Safety		88.613
37.14	Public Safety		88.613
37.16	Public Safety		88.613
37.18	Public Safety		88.613
37.20	Public Safety		88.613
37.22	Public Safety		88.613
37.24	Public Safety		88.613
37.26	Public Safety		88.613
37.28	Public Safety		88.613
37.30	Public Safety		88.613
37.32	Public Safety		88.613
37.34	Public Safety	Mobile Only	88.613
37.36	Public Safety		88.613
37.38	Public Safety	Mobile Only	88.613
37.40	Public Safety		88.613
37.42	Public Safety	Mobile Only	88.613
37.44	Non-Commercial		88.617
37.46	Non-Commercial		88.617
37.48	Non-Commercial		88.617
37.50	Non-Commercial		88.617
37.52	Non-Commercial		88.617
37.54	Non-Commercial		88.617
37.56	Non-Commercial		88.617

37.58	Non-Commercial		88.617
37.60	Non-Commercial	Base, mobile or fixed	88.617
37.62	Non-Commercial		88.617
37.64	Non-Commercial		88.617
37.66	Non-Commercial		88.617
37.68	Non-Commercial		88.617
37.70	Non-Commercial		88.617
37.72	Non-Commercial		88.617
37.74	Non-Commercial		88.617
37.76	Non-Commercial		88.617
37.78	Non-Commercial		88.617
37.80	Non-Commercial		88.617
37.82	Non-Commercial		88.617
37.84	Non-Commercial	Base, mobile or fixed	88.617
37.86	Non-Commercial		88.617
37.88	Non-Commercial		88.617
37.90	Non-Commercial		88.617
37.92	Public Safety		88.613
37.94	Non-Commercial		88.617
37.96	Public Safety		88.613
37.98	Non-Commercial		88.617
37.99-38.00	General Category	Developmental	88.1401
39.00-39.01	General Category	Developmental	88.1401
39.02	Public Safety		88.613
39.04	Public Safety		88.613
39.06	Public Safety	Low Power	88.907
39.08	Public Safety		88.613
39.10	Public Safety		88.613
39.12	Public Safety		88.613
39.14	Public Safety		88.613
39.16	Public Safety		88.613
39.18	Public Safety		88.613
39.20	Public Safety		88.613
39.22	Public Safety		88.613
39.24	Public Safety		88.613
39.26	Public Safety	Mobile Only	88.613
39.28	Public Safety		88.613
39.30	Public Safety	Mobile Only	88.613
39.32	Public Safety		88.613
39.34	Public Safety	Mobile Only	88.613
39.36	Public Safety		88.613
39.38	Public Safety	Mobile Only	88.613
39.40	Public Safety		88.613
39.42	Public Safety		88.613
39.44	Public Safety		88.613
39.46	Public Safety	Mutual Aid	88.1029
39.48	Public Safety		88.613
39.50	Public Safety		88.613
39.52	Public Safety		88.613
39.54	Public Safety		88.613
39.56	Public Safety		88.613
39.58	Public Safety		88.613
39.60	Public Safety		88.613
39.62	Public Safety		88.613
39.64	Public Safety		88.613

39.66	Public Safety	Mobile Only	88.613
39.68	Public Safety		88.613
39.70	Public Safety	Mobile Only	88.613
39.72	Public Safety		88.613
39.74	Public Safety	Mobile Only	88.613
39.76	Public Safety		88.613
39.78	Public Safety	Mobile Only	88.613
39.80	Public Safety		88.613
39.82	Public Safety		88.613
39.84	Public Safety		88.613
39.86	Public Safety		88.613
39.88	Public Safety		88.613
39.90	Public Safety		88.613
39.92	Public Safety		88.613
39.94	Public Safety		88.613
39.96	Public Safety		88.613
39.98	Public Safety		88.613
39.99-40.00	General Category	Developmental	88.1401
41.71	Non-Commercial	Oil Spill Containment	88.965
42.00-42.01	General Category	Developmental	88.1401
42.02	Public Safety	State Plans, 750 Watts	88.613
42.04	Public Safety	State Plans, 750 Watts	88.613
42.06	Public Safety	State Plans, 750 Watts	88.613
42.08	Public Safety	State Plans, 750 Watts	88.613
42.10	Public Safety	State Plans, 750 Watts	88.613
42.12	Public Safety	State Plans, 750 Watts	88.613
42.14	Public Safety	State Plans, 750 Watts	88.613
42.16	Public Safety	State Plans, 750 Watts	88.613
42.18	Public Safety	Mobile Only, State Plans	88.613
42.20	Public Safety	Mobile Only, State Plans	88.613
42.22	Public Safety	Mobile Only, State Plans	88.613
42.24	Public Safety	Mobile Only, State Plans	88.613
42.26	Public Safety	Mobile Only, State Plans	88.613
42.28	Public Safety	Mobile Only, State Plans	88.613
42.30	Public Safety	Mobile Only, State Plans	88.613
42.32	Public Safety	State Plans, 750 Watts	88.613
42.34	Public Safety	State Plans, 750 Watts	88.613
42.36	Public Safety	State Plans, 750 Watts	88.613
42.38	Public Safety	State Plans, 750 Watts	88.613
42.40	Public Safety	State Plans, Meteor Burst	88.613
42.42	Public Safety	State Plans, 750 Watts	88.613
42.44	Public Safety	State Plans, 750 Watts	88.613
42.46	Public Safety	State Plans, 750 Watts	88.613
42.48	Public Safety	State Plans, 750 Watts	88.613
42.50	Public Safety	State Plans, 750 Watts	88.613
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42.54	Public Safety	State Plans, 750 Watts	88.613
42.56	Public Safety	State Plans, 750 Watts	88.613
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42.60	Public Safety	State Plans, 750 Watts	88.613
42.62	Public Safety	State Plans, 750 Watts	88.613
42.64	Public Safety	State Plans, 750 Watts	88.613
42.66	Public Safety	Mobile Only, State Plans	88.613
42.68	Public Safety	Mobile Only, State Plans	88.613
42.70	Public Safety	Mobile Only, State Plans	88.613

42.72	Public Safety	Mobile Only, State Plans	88.613
42.74	Public Safety	Mobile Only, State Plans	88.613
42.76	Public Safety	Mobile Only, State Plans	88.613
42.78	Public Safety	Mobile Only, State Plans	88.613
42.80	Public Safety	State Plans, 750 Watts	88.613
42.82	Public Safety	State Plans, 750 Watts	88.613
42.84	Public Safety	State Plans, 750 Watts	88.613
42.86	Public Safety	State Plans, 750 Watts	88.613
42.88	Public Safety	State Plans, 750 Watts	88.613
42.90	Public Safety	State Plans, 750 Watts	88.613
42.92	Public Safety	State Plans, 750 Watts	88.613
42.94	Public Safety	State Plans, 750 Watts	88.613
42.96	Non-Commercial	110 Watts	88.617
42.98	General Category	Low Power	88.907
43.00	Non-Commercial	110 Watts	88.617
43.02	Non-Commercial	Perm. or Itinerant	88.617
43.04	General Category	Itinerant	88.953
43.06	Non-Commercial	Perm. or Itinerant	88.617
43.08	Non-Commercial	Perm. or Itinerant	88.617
43.10	Non-Commercial	Perm. or Itinerant	88.617
43.12	Non-Commercial	Perm. or Itinerant	88.617
43.14	Non-Commercial	Perm. or Itinerant	88.617
43.16	Non-Commercial	Mobile Only	88.617
43.18	Non-Commercial		88.617
43.28	Non-Commercial	Perm. or Itinerant	88.617
43.32	Non-Commercial	Perm. or Itinerant	88.617
43.36	Non-Commercial	Perm. or Itinerant	88.617
43.40	Non-Commercial	Perm. or Itinerant	88.617
43.44	Non-Commercial	Perm. or Itinerant	88.617
43.48	Non-Commercial	Perm. or Itinerant	88.617
43.52	Non-Commercial	Perm. or Itinerant	88.617
43.64	Non-Commercial	Physically Handicapped	88.1079
43.68	Non-Commercial	Paging	88.1063
43.70	Non-Commercial		88.617
43.72	Non-Commercial		88.617
43.74	Non-Commercial		88.617
43.76	Non-Commercial		88.617
43.78	Non-Commercial		88.617
43.80	Non-Commercial		88.617
43.82	Non-Commercial		88.617
43.84	Non-Commercial		88.617
43.86	Non-Commercial	Paired	88.617
43.88	Non-Commercial	Paired	88.617
43.90	Non-Commercial	Paired	88.617
43.92	Non-Commercial	Paired	88.617
43.94	Non-Commercial	Paired	88.617
43.96	Non-Commercial		88.617
43.98	Non-Commercial		88.617
44.00	Non-Commercial		88.617
44.02	Non-Commercial		88.617
44.04	Non-Commercial		88.617
44.06	Non-Commercial		88.617
44.08	Non-Commercial		88.617
44.10	Non-Commercial	Meteor Burst	88.617
44.12	Non-Commercial		88.617

44.14	Non-Commercial		88.617
44.16	Non-Commercial		88.617
44.18	Non-Commercial		88.617
44.20	Non-Commercial	Meteor Burst	88.617
44.24	Non-Commercial		88.617
44.26	Non-Commercial		88.617
44.28	Non-Commercial		88.617
44.30	Non-Commercial		88.617
44.32	Non-Commercial		88.617
44.34	Non-Commercial		88.617
44.36	Non-Commercial	Paired	88.617
44.38	Non-Commercial	Paired	88.617
44.40	Non-Commercial	Paired	88.617
44.42	Non-Commercial	Paired	88.617
44.44	Non-Commercial	Paired	88.617
44.46	Non-Commercial		88.617
44.48	Non-Commercial		88.617
44.50	Non-Commercial		88.617
44.52	Non-Commercial		88.617
44.54	Non-Commercial		88.617
44.56	Non-Commercial		88.617
44.58	Non-Commercial		88.617
44.60	Non-Commercial		88.617
44.62	Public Safety	State Plans, 750 Watts	88.613
44.64	Public Safety		88.613
44.66	Public Safety	State Plans, 750 Watts	88.613
44.68	Public Safety		88.613
44.70	Public Safety	State Plans, 750 Watts	88.613
44.72	Public Safety		88.613
44.74	Public Safety	State Plans, 750 Watts	88.613
44.76	Public Safety		88.613
44.78	Public Safety	Mobile Only, State Plans	88.613
44.80	Public Safety		88.613
44.82	Public Safety	Mobile Only, State Plans	88.613
44.84	Public Safety		88.613
44.86	Public Safety	Mobile Only, State Plans	88.613
44.88	Public Safety		88.613
44.90	Public Safety	Mobile Only, State Plans	88.613
44.92	Public Safety		88.613
44.94	Public Safety	State Plans, 750 Watts	88.613
44.96	Public Safety		88.613
44.98	Public Safety	State Plans, 750 Watts	88.613
45.00	Public Safety		88.613
45.02	Public Safety	State Plans, 750 Watts	88.613
45.04	Public Safety		88.613
45.06	Public Safety	State Plans, 750 Watts	88.613
45.08	Public Safety		88.613
45.10	Public Safety		88.613
45.12	Public Safety		88.613
45.14	Public Safety		88.613
45.16	Public Safety		88.613
45.18	Public Safety		88.613
45.20	Public Safety		88.613
45.22	Public Safety		88.613
45.24	Public Safety		88.613

45.26	Public Safety	Mobile Only	88.613
45.28	Public Safety		88.613
45.30	Public Safety	Mobile Only	88.613
45.32	Public Safety		88.613
45.34	Public Safety	Mobile Only	88.613
45.36	Public Safety		88.613
45.38	Public Safety	Mobile Only	88.613
45.40	Public Safety		88.613
45.42	Public Safety		88.613
45.44	Public Safety		88.613
45.46	Public Safety		88.613
45.48	Public Safety		88.613
45.50	Public Safety		88.613
45.52	Public Safety		88.613
45.54	Public Safety		88.613
45.56	Public Safety		88.613
45.58	Public Safety		88.613
45.60	Public Safety		88.613
45.62	Public Safety		88.613
45.64	Public Safety		88.613
45.66	Public Safety		88.613
45.68	Public Safety		88.613
45.70	Public Safety		88.613
45.72	Public Safety		88.613
45.74	Public Safety	Mobile Only	88.613
45.76	Public Safety		88.613
45.78	Public Safety	Mobile Only	88.613
45.80	Public Safety		88.613
45.82	Public Safety	Mobile Only	88.613
45.84	Public Safety		88.613
45.86	Public Safety	Mutual Aid	88.1029
45.88	Public Safety	Mutual Aid	88.1029
45.90	Public Safety	Meteor Burst	88.613
45.92	Non-Commercial		88.617
45.96	Non-Commercial		88.617
45.98	Public Safety		88.613
46.00	Non-Commercial		88.617
46.02	Public Safety		88.613
46.04	Non-Commercial		88.617
46.06	Public Safety		88.613
46.08	Public Safety		88.613
46.10	Public Safety		88.613
46.12	Public Safety		88.613
46.14	Public Safety		88.613
46.16	Public Safety		88.613
46.18	Public Safety		88.613
46.20	Public Safety		88.613
46.22	Public Safety	Mobile Only	88.613
46.24	Public Safety	Mobile Only	88.613
46.26	Public Safety	Mobile Only	88.613
46.28	Public Safety	Mobile Only	88.613
46.30	Public Safety	Low Power	88.907
46.32	Public Safety	Mobile Only	88.613
46.34	Public Safety	Mobile Only	88.613
46.36	Public Safety		88.613

46.38	Public Safety		88.613
46.40	Public Safety		88.613
46.42	Public Safety		88.613
46.44	Public Safety		88.613
46.46	Public Safety		88.613
46.48	Public Safety		88.613
46.50	Public Safety		88.613
46.52	Public Safety		88.613
46.54	Public Safety		88.613
46.56	Public Safety		88.613
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47.36	Public Safety	Detectors, State Plans	88.613
47.38	Public Safety	Detectors, State Plans	88.613
47.40	Public Safety	Detectors, State Plans	88.613
47.42	Non-Commercial	Disaster	88.617
47.44	Non-Commercial		88.617
47.46	Non-Commercial		88.617
47.48	Non-Commercial		88.617
47.50	Non-Commercial		88.617
47.52	Non-Commercial		88.617
47.54	Non-Commercial		88.617
47.56	Non-Commercial		88.617
47.58	Non-Commercial		88.617
47.60	Non-Commercial		88.617
47.62	Non-Commercial		88.617
47.64	Non-Commercial		88.617
47.66	Non-Commercial		88.617
47.68	Non-Commercial		88.617
47.70	Non-Commercial		88.617
47.72	Non-Commercial		88.617
47.74	Non-Commercial		88.617
47.76	Non-Commercial		88.617
47.78	Non-Commercial		88.617
47.80	Non-Commercial		88.617
47.82	Non-Commercial		88.617
47.84	Non-Commercial		88.617
47.86	Non-Commercial		88.617
47.88	Non-Commercial		88.617

47.90	Non-Commercial	88.617
47.92	Non-Commercial	88.617
47.94	Non-Commercial	88.617
47.96	Non-Commercial	88.617
47.98	Non-Commercial	88.617
48.00	Non-Commercial	88.617
48.02	Non-Commercial	88.617
48.04	Non-Commercial	88.617
48.06	Non-Commercial	88.617
48.08	Non-Commercial	88.617
48.10	Non-Commercial	88.617
48.12	Non-Commercial	88.617
48.14	Non-Commercial	88.617
48.16	Non-Commercial	88.617
48.18	Non-Commercial	88.617
48.20	Non-Commercial	88.617
48.22	Non-Commercial	88.617
48.24	Non-Commercial	88.617
48.26	Non-Commercial	88.617
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48.36	Non-Commercial	88.617
48.38	Non-Commercial	88.617
48.40	Non-Commercial	88.617
48.42	Non-Commercial	88.617
48.44	Non-Commercial	88.617
48.46	Non-Commercial	88.617
48.48	Non-Commercial	88.617
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48.56	Non-Commercial	88.617
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48.68	Non-Commercial	88.617
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48.84	Non-Commercial	88.617
48.86	Non-Commercial	88.617
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48.90	Non-Commercial	88.617
48.92	Non-Commercial	88.617
48.94	Non-Commercial	88.617
48.96	Non-Commercial	88.617
48.98	Non-Commercial	88.617

49.00	Non-Commercial		88.617
49.02	Non-Commercial		88.617
49.04	Non-Commercial		88.617
49.06	Non-Commercial		88.617
49.08	Non-Commercial		88.617
49.10	Non-Commercial		88.617
49.12	Non-Commercial		88.617
49.14	Non-Commercial		88.617
49.16	Non-Commercial		88.617
49.18	Non-Commercial		88.617
49.20	Non-Commercial		88.617
49.22	Non-Commercial		88.617
49.24	Non-Commercial		88.617
49.26	Non-Commercial		88.617
49.28	Non-Commercial		88.617
49.30	Non-Commercial		88.617
49.32	Non-Commercial		88.617
49.34	Non-Commercial		88.617
49.36	Non-Commercial		88.617
49.38	Non-Commercial		88.617
49.40	Non-Commercial		88.617
49.42	Non-Commercial		88.617
49.44	Non-Commercial		88.617
49.46	Non-Commercial		88.617
49.48	Non-Commercial		88.617
49.50	Non-Commercial		88.617
49.52	Non-Commercial	Perm. or Itinerant	88.617
49.54	Non-Commercial	Perm. or Itinerant	88.617
49.56	Non-Commercial		88.617
49.58	Non-Commercial	Perm. or Itinerant	88.617
72.0125	General Category	Low Power	88.907
72.0175	General Category	Low Power	88.907
72.02	General Category	Fixed	88.1189
72.0225	General Category	Low Power	88.907
72.0275	General Category	Low Power	88.907
72.0325	General Category	Low Power	88.907
72.0375	General Category	Low Power	88.907
72.04	General Category	Fixed	88.1189
72.0425	General Category	Low Power	88.907
72.0475	General Category	Low Power	88.907
72.0525	General Category	Low Power	88.907
72.0575	General Category	Low Power	88.907
72.06	General Category	Fixed	88.1189
72.0625	General Category	Low Power	88.907
72.0675	General Category	Low Power	88.907
72.0725	General Category	Low Power	88.907
72.0775	General Category	Low Power	88.907
72.08	General Category	Fixed	88.1189
72.0825	General Category	Low Power	88.907
72.0875	General Category	Low Power	88.907
72.0925	General Category	Low Power	88.907
72.0975	General Category	Low Power	88.907
72.10	General Category	Fixed	88.1189
72.1025	General Category	Low Power	88.907
72.1075	General Category	Low Power	88.907

72.1125	General Category	Low Power	88.907
72.1175	General Category	Low Power	88.907
72.12	General Category	Fixed	88.1189
72.1225	General Category	Low Power	88.907
72.1275	General Category	Low Power	88.907
72.1325	General Category	Low Power	88.907
72.1375	General Category	Low Power	88.907
72.14	General Category	Fixed	88.1189
72.1425	General Category	Low Power	88.907
72.1475	General Category	Low Power	88.907
72.1525	General Category	Low Power	88.907
72.1575	General Category	Low Power	88.907
72.16	General Category	Fixed	88.1189
72.1625	General Category	Low Power	88.907
72.1675	General Category	Low Power	88.907
72.1725	General Category	Low Power	88.907
72.1775	General Category	Low Power	88.907
72.18	General Category	Fixed	88.1189
72.1825	General Category	Low Power	88.907
72.1875	General Category	Low Power	88.907
72.1925	General Category	Low Power	88.907
72.1975	General Category	Low Power	88.907
72.20	General Category	Fixed	88.1189
72.2025	General Category	Low Power	88.907
72.2075	General Category	Low Power	88.907
72.2125	General Category	Low Power	88.907
72.2175	General Category	Low Power	88.907
72.22	General Category	Fixed	88.1189
72.2225	General Category	Low Power	88.907
72.2275	General Category	Low Power	88.907
72.2325	General Category	Low Power	88.907
72.2375	General Category	Low Power	88.907
72.24	General Category	Fixed	88.1189
72.2425	General Category	Low Power	88.907
72.2475	General Category	Low Power	88.907
72.2525	General Category	Low Power	88.907
72.2575	General Category	Low Power	88.907
72.26	General Category	Fixed	88.1189
72.2625	General Category	Low Power	88.907
72.2675	General Category	Low Power	88.907
72.2725	General Category	Low Power	88.907
72.2775	General Category	Low Power	88.907
72.28	General Category	Fixed	88.1189
72.2825	General Category	Low Power	88.907
72.2875	General Category	Low Power	88.907
72.2925	General Category	Low Power	88.907
72.2975	General Category	Low Power	88.907
72.30	General Category	Fixed	88.1189
72.3025	General Category	Low Power	88.907
72.3075	General Category	Low Power	88.907
72.3125	General Category	Low Power	88.907
72.3175	General Category	Low Power	88.907
72.32	General Category	Fixed	88.1189
72.3225	General Category	Low Power	88.907
72.3275	General Category	Low Power	88.907

72.3325	General Category	Low Power	88.907
72.3375	General Category	Low Power	88.907
72.34	General Category	Fixed	88.1189
72.3425	General Category	Low Power	88.907
72.3475	General Category	Low Power	88.907
72.3525	General Category	Low Power	88.907
72.3575	General Category	Low Power	88.907
72.36	General Category	Fixed	88.1189
72.3625	General Category	Low Power	88.907
72.3675	General Category	Low Power	88.907
72.3725	General Category	Low Power	88.907
72.3775	General Category	Low Power	88.907
72.38	General Category	Fixed	88.1189
72.3825	General Category	Low Power	88.907
72.3875	General Category	Low Power	88.907
72.3925	General Category	Low Power	88.907
72.3975	General Category	Low Power	88.907
72.40	General Category	Fixed	88.1189
72.4025	General Category	Low Power	88.907
72.4075	General Category	Low Power	88.907
72.42	General Category	Fixed	88.1189
72.4325	General Category	Low Power	88.907
72.4375	General Category	Low Power	88.907
72.4425	General Category	Low Power	88.907
72.4475	General Category	Low Power	88.907
72.46	General Category	Fixed	88.1189
72.4725	General Category	Low Power	88.907
72.4775	General Category	Low Power	88.907
72.4825	General Category	Low Power	88.907
72.4875	General Category	Low Power	88.907
72.50	General Category	Fixed	88.1189
72.5125	General Category	Low Power	88.907
72.5175	General Category	Low Power	88.907
72.5225	General Category	Low Power	88.907
72.5275	General Category	Low Power	88.907
72.54	General Category	Fixed	88.1189
72.5525	General Category	Low Power	88.907
72.5575	General Category	Low Power	88.907
72.5625	General Category	Low Power	88.907
72.5675	General Category	Low Power	88.907
72.58	General Category	Fixed	88.1189
72.5925	General Category	Low Power	88.907
72.5975	General Category	Low Power	88.907
72.6025	General Category	Low Power	88.907
72.6075	General Category	Low Power	88.907
72.62	General Category	Fixed	88.1189
72.64	General Category	Fixed	88.1189
72.66	General Category	Fixed	88.1189
72.68	General Category	Fixed	88.1189
72.70	General Category	Fixed	88.1189
72.72	General Category	Fixed	88.1189
72.74	General Category	Fixed	88.1189
72.76	General Category	Fixed	88.1189
72.78	General Category	Fixed	88.1189
72.80	General Category	Fixed	88.1189

72.82	General Category	Fixed	88.1189
72.84	General Category	Fixed	88.1189
72.86	General Category	Fixed	88.1189
72.88	General Category	Fixed	88.1189
72.90	General Category	Fixed	88.1189
72.92	General Category	Fixed	88.1189
72.94	General Category	Fixed	88.1189
72.96	General Category	Fixed	88.1189
72.98	General Category	Fixed	88.1189
74.6025	General Category	Low Power	88.907
74.6075	General Category	Low Power	88.907
74.6125	General Category	Low Power	88.907
74.6175	General Category	Low Power	88.907
74.6225	General Category	Low Power	88.907
74.6275	General Category	Low Power	88.907
74.6325	General Category	Low Power	88.907
74.6375	General Category	Low Power	88.907
74.6425	General Category	Low Power	88.907
74.6475	General Category	Low Power	88.907
74.6525	General Category	Low Power	88.907
74.6575	General Category	Low Power	88.907
74.6625	General Category	Low Power	88.907
74.6675	General Category	Low Power	88.907
74.6725	General Category	Low Power	88.907
74.6775	General Category	Low Power	88.907
74.6825	General Category	Low Power	88.907
74.6875	General Category	Low Power	88.907
74.6925	General Category	Low Power	88.907
74.6975	General Category	Low Power	88.907
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74.7075	General Category	Low Power	88.907
74.7125	General Category	Low Power	88.907
74.7175	General Category	Low Power	88.907
74.7225	General Category	Low Power	88.907
74.7275	General Category	Low Power	88.907
74.7325	General Category	Low Power	88.907
74.7375	General Category	Low Power	88.907
74.7425	General Category	Low Power	88.907
74.7475	General Category	Low Power	88.907
74.7525	General Category	Low Power	88.907
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74.7625	General Category	Low Power	88.907
74.7675	General Category	Low Power	88.907
74.7725	General Category	Low Power	88.907
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74.7875	General Category	Low Power	88.907
74.7925	General Category	Low Power	88.907
74.7975	General Category	Low Power	88.907
75.2025	General Category	Low Power	88.907
75.2075	General Category	Low Power	88.907
75.2125	General Category	Low Power	88.907
75.2175	General Category	Low Power	88.907
75.2225	General Category	Low Power	88.907
75.2275	General Category	Low Power	88.907

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75.2475	General Category	Low Power	88.907
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75.2975	General Category	Low Power	88.907
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75.3425	General Category	Low Power	88.907
75.3475	General Category	Low Power	88.907
75.3525	General Category	Low Power	88.907
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75.3975	General Category	Low Power	88.907
75.42	General Category	Fixed	88.1189
75.4325	General Category	Low Power	88.907
75.4375	General Category	Low Power	88.907
75.4425	General Category	Low Power	88.907
75.4475	General Category	Low Power	88.907
75.46	General Category	Fixed	88.1189
75.4725	General Category	Low Power	88.907
75.4775	General Category	Low Power	88.907
75.4825	General Category	Low Power	88.907
75.4875	General Category	Low Power	88.907
75.50	General Category	Fixed	88.1189
75.5125	General Category	Low Power	88.907
75.5175	General Category	Low Power	88.907
75.5225	General Category	Low Power	88.907
75.5275	General Category	Low Power	88.907
75.54	General Category	Fixed	88.1189
75.5525	General Category	Low Power	88.907
75.5575	General Category	Low Power	88.907
75.5625	General Category	Low Power	88.907
75.5675	General Category	Low Power	88.907
75.58	General Category	Fixed	88.1189

75.5925	General Category	Low Power	88.907
75.5975	General Category	Low Power	88.907
75.6025	General Category	Low Power	88.907
75.6075	General Category	Low Power	88.907
75.62	General Category	Fixed	88.1189
75.64	General Category	Fixed	88.1189
75.66	General Category	Fixed	88.1189
75.68	General Category	Fixed	88.1189
75.70	General Category	Fixed	88.1189
75.72	General Category	Fixed	88.1189
75.74	General Category	Fixed	88.1189
75.76	General Category	Fixed	88.1189
75.78	General Category	Fixed	88.1189
75.80	General Category	Fixed	88.1189
75.82	General Category	Fixed	88.1189
75.84	General Category	Fixed	88.1189
75.86	General Category	Fixed	88.1189
75.88	General Category	Fixed	88.1189
75.90	General Category	Fixed	88.1189
75.92	General Category	Fixed	88.1189
75.94	General Category	Fixed	88.1189
75.96	General Category	Fixed	88.1189
75.98	General Category	Fixed	88.1189
150.770	Public Safety	Low Power	88.907
150.775	Public Safety	Low Power	88.907
150.780	Public Safety	Low Power	88.907
150.785	Public Safety	Low Power	88.907
150.790	Public Safety	Low Power	88.907
150.795	Public Safety	Low Power	88.907
150.810	SMR	Innovative Shared	88.999
150.815	Non-Commercial	Gen Pool in PR, VI	88.617
150.820	Non-Commercial	Gen Pool in PR, VI	88.617
150.825	SMR	Innovative Shared	88.999
150.830	Non-Commercial	Gen Pool in PR, VI	88.617
150.835	Non-Commercial	Gen Pool in PR, VI	88.617
150.840	SMR	Innovative Shared	88.999
150.845	Non-Commercial	Gen Pool in PR, VI	88.617
150.850	Non-Commercial	Gen Pool in PR, VI	88.617
150.855	SMR	Innovative Shared	88.999
150.860	Non-Commercial	Gen Pool in PR, VI	88.617
150.865	Non-Commercial	Gen Pool in PR, VI	88.617
150.870	SMR	Innovative Shared	88.999
150.875	Non-Commercial	Gen Pool in PR, VI	88.617
150.880	Non-Commercial	Gen Pool in PR, VI	88.617
150.885	SMR	Innovative Shared	88.999
150.890	Non-Commercial	Gen Pool in PR, VI	88.617
150.895	Non-Commercial	Gen Pool in PR, VI	88.617
150.900	SMR	Innovative Shared	88.999
150.905	Non-Commercial	Gen Pool in PR, VI	88.617
150.910	Non-Commercial	Gen Pool in PR, VI	88.617
150.915	SMR	Innovative Shared	88.999
150.920	Non-Commercial	Gen Pool in PR, VI	88.617
150.925	Non-Commercial	Gen Pool in PR, VI	88.617
150.930	SMR	Innovative Shared	88.999
150.935	Non-Commercial	Gen Pool in PR, VI	88.617

150.940	Non-Commercial	Gen Pool in PR, VI	88.617
150.945	SMR	Innovative Shared	88.999
150.950	Non-Commercial	Gen Pool in PR, VI	88.617
150.955	Non-Commercial	Gen Pool in PR, VI	88.617
150.960	SMR	Innovative Shared	88.999
150.965	Non-Commercial	Gen Pool in PR, VI	88.617
150.970	Non-Commercial	Gen Pool in PR, VI	88.617
150.975	SMR	Innovative Shared	88.999
150.980	Non-Commercial	Oil Spill	88.617
150.985	Non-Commercial	Oil Spill	88.617
150.990	SMR	Innovative Shared	88.999
150.995	Public Safety	Gen Pool in PR, VI	88.613
151.000	Public Safety	Gen Pool in PR, VI	88.613
151.005	SMR	Innovative Shared	88.999
151.010	Public Safety	Gen Pool in PR, VI	88.613
151.015	Public Safety	Gen Pool in PR, VI	88.613
151.020	SMR	Innovative Shared	88.999
151.025	Public Safety	Gen Pool in PR, VI	88.613
151.030	Public Safety	Gen Pool in PR, VI	88.613
151.035	SMR	Innovative Shared	88.999
151.040	Public Safety	Gen Pool in PR, VI	88.613
151.045	Public Safety	Gen Pool in PR, VI	88.613
151.050	SMR	Innovative Shared	88.999
151.055	Public Safety	Gen Pool in PR, VI	88.613
151.060	Public Safety	Gen Pool in PR, VI	88.613
151.065	SMR	Innovative Shared	88.999
151.070	Public Safety	Gen Pool in PR, VI	88.613
151.075	Public Safety	Gen Pool in PR, VI	88.613
151.080	SMR	Innovative Shared	88.999
151.085	Public Safety	Gen Pool in PR, VI	88.613
151.090	Public Safety	Gen Pool in PR, VI	88.613
151.095	SMR	Innovative Shared	88.999
151.100	Public Safety	Gen Pool in PR, VI	88.613
151.105	Public Safety	Gen Pool in PR, VI	88.613
151.110	SMR	Innovative Shared	88.999
151.115	Public Safety	Gen Pool in PR, VI	88.613
151.120	Public Safety	Gen Pool in PR, VI	88.613
151.125	SMR	Innovative Shared	88.999
151.130	Public Safety	Gen Pool in PR, VI	88.613
151.135	Public Safety	Gen Pool in PR, VI	88.613
151.140	SMR	Innovative Shared	88.999
151.145	Public Safety	Gen Pool in PR, VI	88.613
151.150	Public Safety	Gen Pool in PR, VI	88.613
151.155	SMR	Innovative Shared	88.999
151.160	Public Safety	Gen Pool in PR, VI	88.613
151.165	Public Safety	Gen Pool in PR, VI	88.613
151.170	SMR	Innovative Shared	88.999
151.175	Public Safety	Gen Pool in PR, VI	88.613
151.180	Public Safety	Gen Pool in PR, VI	88.613
151.185	SMR	Innovative Shared	88.999
151.190	Public Safety	Gen Pool in PR, VI	88.613
151.195	Public Safety	Gen Pool in PR, VI	88.613
151.200	SMR	Innovative Shared	88.999
151.205	Public Safety	Gen Pool in PR, VI	88.613
151.210	Public Safety	Gen Pool in PR, VI	88.613

151.215	SMR	Innovative Shared	88.999
151.220	Public Safety	Gen Pool in PR, VI	88.613
151.225	Public Safety	Gen Pool in PR, VI	88.613
151.230	SMR	Innovative Shared	88.999
151.235	Public Safety	Gen Pool in PR, VI	88.613
151.240	Public Safety	Gen Pool in PR, VI	88.613
151.245	SMR	Innovative Shared	88.999
151.250	Public Safety	Gen Pool in PR, VI	88.613
151.255	Public Safety	Gen Pool in PR, VI	88.613
151.260	SMR	Innovative Shared	88.999
151.265	Public Safety	Gen Pool in PR, VI	88.613
151.270	Public Safety	Gen Pool in PR, VI	88.613
151.275	SMR	Innovative Shared	88.999
151.280	Public Safety	Gen Pool in PR, VI	88.613
151.285	Public Safety	Gen Pool in PR, VI	88.613
151.290	SMR	Innovative Shared	88.999
151.295	Public Safety	Gen Pool in PR, VI	88.613
151.300	Public Safety	Gen Pool in PR, VI	88.613
151.305	SMR	Innovative Shared	88.999
151.310	Public Safety	Gen Pool in PR, VI	88.613
151.315	Public Safety	Gen Pool in PR, VI	88.613
151.320	SMR	Innovative Shared	88.999
151.325	Public Safety	Gen Pool in PR, VI	88.613
151.330	Public Safety	Gen Pool in PR, VI	88.613
151.335	SMR	Innovative Shared	88.999
151.340	Public Safety	Gen Pool in PR, VI	88.613
151.345	Public Safety	Gen Pool in PR, VI	88.613
151.350	SMR	Innovative Shared	88.999
151.355	Public Safety	Gen Pool in PR, VI	88.613
151.360	Public Safety	Gen Pool in PR, VI	88.613
151.365	SMR	Innovative Shared	88.999
151.370	Public Safety	Gen Pool in PR, VI	88.613
151.375	Public Safety	Gen Pool in PR, VI	88.613
151.380	SMR	Innovative Shared	88.999
151.385	Public Safety	Gen Pool in PR, VI	88.613
151.390	Public Safety	Gen Pool in PR, VI	88.613
151.395	SMR	Innovative Shared	88.999
151.400	Public Safety	Gen Pool in PR, VI	88.613
151.405	Public Safety	Gen Pool in PR, VI	88.613
151.410	SMR	Innovative Shared	88.999
151.415	Public Safety	Gen Pool in PR, VI	88.613
151.420	Public Safety	Gen Pool in PR, VI	88.613
151.425	SMR	Innovative Shared	88.999
151.430	Public Safety	Gen Pool in PR, VI	88.613
151.435	Public Safety	Gen Pool in PR, VI	88.613
151.440	SMR	Innovative Shared	88.999
151.445	Public Safety	Gen Pool in PR, VI	88.613
151.450	Public Safety	Gen Pool in PR, VI	88.613
151.455	SMR	Innovative Shared	88.999
151.460	Public Safety	Gen Pool in PR, VI	88.613
151.465	Public Safety	Gen Pool in PR, VI	88.613
151.470	SMR	Innovative Shared	88.999
151.475	Public Safety	Gen Pool in PR, VI	88.613
151.480	Public Safety	Gen Pool in PR, VI	88.613
151.485	SMR	Innovative Shared	88.999

151.490	Non-Commercial	Unavailable in PR, VI	88.617
151.495	Non-Commercial	Unavailable in PR, VI	88.617
151.500	SMR	Innovative Shared	88.999
151.505	General Category	Itinerant	88.953
151.510	General Category	Itinerant	88.953
151.515	SMR	Innovative Shared	88.999
151.520	Non-Commercial		88.617
151.525	Non-Commercial		88.617
151.530	SMR	Innovative Shared	88.999
151.535	Non-Commercial		88.617
151.540	Non-Commercial		88.617
151.545	SMR	Innovative Shared	88.999
151.550	Non-Commercial		88.617
151.555	Non-Commercial		88.617
151.560	SMR	Innovative Shared	88.999
151.565	Non-Commercial		88.617
151.570	Non-Commercial		88.617
151.575	SMR	Innovative Shared	88.999
151.580	Non-Commercial		88.617
151.585	Non-Commercial		88.617
151.590	SMR	Innovative Shared	88.999
151.595	Non-Commercial		88.617
151.600	Non-Commercial		88.617
151.605	SMR	Innovative Shared	88.999
151.610	General Category	Shared Use Only	88.625
151.615	General Category	Shared Use Only	88.625
151.620	SMR	Innovative Shared	88.999
151.625	General Category	Itinerant	88.953
151.630	General Category	Itinerant	88.953
151.635	SMR	Innovative Shared	88.999
151.640	General Category	Shared Use Only	88.625
151.645	General Category	Shared Use Only	88.625
151.650	SMR	Innovative Shared	88.999
151.655	General Category	Shared Use Only	88.625
151.660	General Category	Shared Use Only	88.625
151.665	SMR	Innovative Shared	88.999
151.670	General Category	Shared Use Only	88.625
151.675	General Category	Shared Use Only	88.625
151.680	SMR	Innovative Shared	88.999
151.685	General Category	Shared Use Only	88.625
151.690	General Category	Shared Use Only	88.625
151.695	SMR	Innovative Shared	88.999
151.700	General Category	Shared Use Only	88.625
151.705	General Category	Shared Use Only	88.625
151.710	SMR	Innovative Shared	88.999
151.715	General Category	Shared Use Only	88.625
151.720	General Category	Shared Use Only	88.625
151.725	SMR	Innovative Shared	88.999
151.730	General Category	Shared Use Only	88.625
151.735	General Category	Shared Use Only	88.625
151.740	SMR	Innovative Shared	88.999
151.745	General Category	Shared Use Only	88.625
151.750	General Category	Shared Use Only	88.625
151.755	SMR	Innovative Shared	88.999
151.760	General Category	Shared Use Only	88.625

151.765	General Category	Shared Use Only	88.625
151.770	SMR	Innovative Shared	88.999
151.775	General Category	Shared Use Only	88.625
151.780	General Category	Shared Use Only	88.625
151.785	SMR	Innovative Shared	88.999
151.790	General Category	Shared Use Only	88.625
151.795	General Category	Shared Use Only	88.625
151.800	SMR	Innovative Shared	88.999
151.805	General Category	Shared Use Only	88.625
151.810	General Category	Shared Use Only	88.625
151.815	SMR	Innovative Shared	88.999
151.820	General Category	Shared Use Only	88.625
151.825	General Category	Shared Use Only	88.625
151.830	SMR	Innovative Shared	88.999
151.835	General Category	Shared Use Only	88.625
151.840	General Category	Shared Use Only	88.625
151.845	SMR	Innovative Shared	88.999
151.850	General Category	Shared Use Only	88.625
151.855	General Category	Shared Use Only	88.625
151.860	SMR	Innovative Shared	88.999
151.865	General Category	Shared Use Only	88.625
151.870	General Category	Shared Use Only	88.625
151.875	SMR	Innovative Shared	88.999
151.880	General Category	Shared Use Only	88.625
151.885	General Category	Shared Use Only	88.625
151.890	SMR	Innovative Shared	88.999
151.895	General Category	Shared Use Only	88.625
151.900	General Category	Shared Use Only	88.625
151.905	SMR	Innovative Shared	88.999
151.910	General Category	Shared Use Only	88.625
151.915	General Category	Shared Use Only	88.625
151.920	SMR	Innovative Shared	88.999
151.925	General Category	Shared Use Only	88.625
151.930	General Category	Shared Use Only	88.625
151.935	SMR	Innovative Shared	88.999
151.940	General Category	Shared Use Only	88.625
151.945	General Category	Shared Use Only	88.625
151.950	SMR	Innovative Shared	88.999
151.955	General Category	Shared Use Only	88.625
151.960	General Category	Shared Use Only	88.625
151.965	SMR	Innovative Shared	88.999
151.970	General Category	Shared Use Only	88.625
151.975	General Category	Shared Use Only	88.625
151.980	SMR	Innovative Shared	88.999
151.985	Non-Commercial		88.617
151.990	Non-Commercial		88.617
152.0075	Non-Commercial	Paging	88.1063
152.265	SMR	Innovative Shared	88.999
152.270	Non-Commercial	Paired	88.617
152.275	Non-Commercial	Paired	88.617
152.280	Non-Commercial	Paired	88.617
152.280	SMR	Innovative Shared	88.999
152.295	SMR	Innovative Shared	88.999
152.300	Non-Commercial	Paired, Gen in PR, VI	88.617
152.305	Non-Commercial	Paired, Gen in PR, VI	88.617

152.310	SMR	Innovative Shared	88.999
152.315	Non-Commercial	Paired, Gen in PR, VI	88.617
152.320	Non-Commercial	Paired, Gen in PR, VI	88.617
152.325	SMR	Innovative Shared	88.999
152.330	Non-Commercial	Paired	88.617
152.335	Non-Commercial	Paired	88.617
152.340	SMR	Innovative Shared	88.999
152.345	Non-Commercial	Paired, Gen in PR, VI	88.617
152.350	Non-Commercial	Paired, Gen in PR, VI	88.617
152.355	SMR	Innovative Shared	88.999
152.360	Non-Commercial	Paired, Gen in PR, VI	88.617
152.360	Non-Commercial	Paired, Gen in PR, VI	88.617
152.370	SMR	Innovative Shared	88.999
152.375	Non-Commercial	Paired, Gen in PR, VI	88.617
152.380	Non-Commercial	Paired, Gen in PR, VI	88.617
152.385	SMR	Innovative Shared	88.999
152.390	Non-Commercial	Paired	88.617
152.395	Non-Commercial	Paired	88.617
152.400	SMR	Innovative Shared	88.999
152.405	Non-Commercial	Paired, Gen in PR, VI	88.617
152.410	Non-Commercial	Paired, Gen in PR, VI	88.617
152.415	SMR	Innovative Shared	88.999
152.420	Non-Commercial	Paired, Gen in PR, VI	88.617
152.425	Non-Commercial	Paired, Gen in PR, VI	88.617
152.430	SMR	Innovative Shared	88.999
152.435	Non-Commercial	Paired	88.617
152.440	Non-Commercial	Paired	88.617
152.445	SMR	Innovative Shared	88.999
152.450	Non-Commercial	Paired	88.617
152.455	Non-Commercial	Paired	88.617
152.460	Non-Commercial	Paired	88.617
152.465	Non-Commercial	Paired	88.617
152.480	General Category	Paging	88.1063
152.865	SMR	Innovative Shared	88.999
152.870	Non-Commercial		88.617
152.875	Non-Commercial		88.617
152.880	SMR	Innovative Shared	88.999
152.885	Non-Commercial		88.617
152.890	Non-Commercial		88.617
152.895	SMR	Innovative Shared	88.999
152.900	Non-Commercial		88.617
152.905	Non-Commercial		88.617
152.910	SMR	Innovative Shared	88.999
152.915	Non-Commercial		88.617
152.920	Non-Commercial		88.617
152.925	SMR	Innovative Shared	88.999
152.930	Non-Commercial		88.617
152.935	Non-Commercial		88.617
152.940	SMR	Innovative Shared	88.999
152.945	Non-Commercial		88.617
152.950	Non-Commercial		88.617
152.955	SMR	Innovative Shared	88.999
152.960	Non-Commercial		88.617
152.965	Non-Commercial		88.617
152.970	SMR	Innovative Shared	88.999

152.975	Non-Commercial		88.617
152.980	Non-Commercial		88.617
152.985	SMR	Innovative Shared	88.999
152.990	Non-Commercial		88.617
152.995	Non-Commercial -		88.617
153.000	SMR	Innovative Shared	88.999
153.005	Non-Commercial		88.617
153.010	Non-Commercial		88.617
153.015	SMR	Innovative Shared	88.999
153.020	Non-Commercial		88.617
153.025	Non-Commercial		88.617
153.030	SMR	Innovative Shared	88.999
153.035	Non-Commercial		88.617
153.040	Non-Commercial		88.617
153.045	SMR	Innovative Shared	88.999
153.050	Non-Commercial		88.617
153.055	Non-Commercial		88.617
153.060	SMR	Innovative Shared	88.999
153.065	Non-Commercial		88.617
153.070	Non-Commercial		88.617
153.075	SMR	Innovative Shared	88.999
153.080	Non-Commercial		88.617
153.085	Non-Commercial		88.617
153.090	SMR	Innovative Shared	88.999
153.095	Non-Commercial		88.617
153.100	Non-Commercial		88.617
153.105	SMR	Innovative Shared	88.999
153.110	Non-Commercial		88.617
153.115	Non-Commercial		88.617
153.120	SMR	Innovative Shared	88.999
153.125	Non-Commercial		88.617
153.130	Non-Commercial		88.617
153.135	SMR	Innovative Shared	88.999
153.140	Non-Commercial		88.617
153.145	Non-Commercial		88.617
153.150	SMR	Innovative Shared	88.999
153.155	Non-Commercial		88.617
153.160	Non-Commercial		88.617
153.165	SMR	Innovative Shared	88.999
153.170	Non-Commercial		88.617
153.175	Non-Commercial		88.617
153.180	SMR	Innovative Shared	88.999
153.185	Non-Commercial		88.617
153.190	Non-Commercial		88.617
153.195	SMR	Innovative Shared	88.999
153.200	Non-Commercial		88.617
153.205	Non-Commercial		88.617
153.210	SMR	Innovative Shared	88.999
153.215	Non-Commercial		88.617
153.220	Non-Commercial		88.617
153.225	SMR	Innovative Shared	88.999
153.230	Non-Commercial		88.617
153.235	Non-Commercial		88.617
153.240	SMR	Innovative Shared	88.999
153.245	Non-Commercial		88.617

153.250	Non-Commercial		88.617
153.255	SMR	Innovative Shared	88.999
153.260	Non-Commercial		88.617
153.265	Non-Commercial		88.617
153.270	SMR	Innovative Shared	88.999
153.275	Non-Commercial		88.617
153.280	Non-Commercial		88.617
153.285	SMR	Innovative Shared	88.999
153.290	Non-Commercial		88.617
153.295	Non-Commercial		88.617
153.300	SMR	Innovative Shared	88.999
153.305	Non-Commercial		88.617
153.310	Non-Commercial		88.617
153.315	SMR	Innovative Shared	88.999
153.320	Non-Commercial		88.617
153.325	Non-Commercial		88.617
153.330	SMR	Innovative Shared	88.999
153.335	Non-Commercial		88.617
153.340	Non-Commercial		88.617
153.345	SMR	Innovative Shared	88.999
153.350	Non-Commercial		88.617
153.355	Non-Commercial		88.617
153.360	SMR	Innovative Shared	88.999
153.365	Non-Commercial		88.617
153.370	Non-Commercial		88.617
153.375	SMR	Innovative Shared	88.999
153.380	Non-Commercial		88.617
153.385	Non-Commercial		88.617
153.390	SMR	Innovative Shared	88.999
153.395	Non-Commercial		88.617
153.400	Non-Commercial		88.617
153.405	SMR	Innovative Shared	88.999
153.410	Non-Commercial		88.617
153.415	Non-Commercial		88.617
153.420	SMR	Innovative Shared	88.999
153.425	Non-Commercial		88.617
153.430	Non-Commercial		88.617
153.435	SMR	Innovative Shared	88.999
153.440	Non-Commercial		88.617
153.445	Non-Commercial		88.617
153.450	SMR	Innovative Shared	88.999
153.455	Non-Commercial		88.617
153.460	Non-Commercial		88.617
153.465	SMR	Innovative Shared	88.999
153.470	Non-Commercial		88.617
153.475	Non-Commercial		88.617
153.480	SMR	Innovative Shared	88.999
153.485	Non-Commercial		88.617
153.490	Non-Commercial		88.617
153.495	SMR	Innovative Shared	88.999
153.500	Non-Commercial		88.617
153.505	Non-Commercial		88.617
153.510	SMR	Innovative Shared	88.999
153.515	Non-Commercial		88.617
153.520	Non-Commercial		88.617

153.525	SMR	Innovative Shared	88.999
153.530	Non-Commercial		88.617
153.535	Non-Commercial		88.617
153.540	SMR	Innovative Shared	88.999
153.545	Non-Commercial		88.617
153.550	Non-Commercial		88.617
153.555	SMR	Innovative Shared	88.999
153.560	Non-Commercial		88.617
153.565	Non-Commercial		88.617
153.570	SMR	Innovative Shared	88.999
153.575	Non-Commercial		88.617
153.580	Non-Commercial		88.617
153.585	SMR	Innovative Shared	88.999
153.590	Non-Commercial		88.617
153.595	Non-Commercial		88.617
153.600	SMR	Innovative Shared	88.999
153.605	Non-Commercial		88.617
153.610	Non-Commercial		88.617
153.615	SMR	Innovative Shared	88.999
153.620	Non-Commercial		88.617
153.625	Non-Commercial		88.617
153.630	SMR	Innovative Shared	88.999
153.635	Non-Commercial		88.617
153.640	Non-Commercial		88.617
153.645	SMR	Innovative Shared	88.999
153.650	Non-Commercial		88.617
153.655	Non-Commercial		88.617
153.660	SMR	Innovative Shared	88.999
153.665	Non-Commercial		88.617
153.670	Non-Commercial		88.617
153.675	SMR	Innovative Shared	88.999
153.680	Non-Commercial		88.617
153.685	Non-Commercial		88.617
153.690	SMR	Innovative Shared	88.999
153.695	Non-Commercial		88.617
153.700	Non-Commercial		88.617
153.705	SMR	Innovative Shared	88.999
153.710	Non-Commercial		88.617
153.715	Non-Commercial		88.617
153.720	SMR	Innovative Shared	88.999
153.725	Non-Commercial		88.617
153.730	Non-Commercial		88.617
153.735	SMR	Innovative Shared	88.999
153.740	Public Safety	Mobile Only	88.613
153.745	Public Safety	Mobile Only	88.613
153.750	SMR	Innovative Shared	88.999
153.755	Public Safety	Mobile Only	88.613
153.760	Public Safety	Mobile Only	88.613
153.765	SMR	Innovative Shared	88.999
153.770	Public Safety	Mobile Only	88.613
153.775	Public Safety	Mobile Only	88.613
153.780	SMR	Innovative Shared	88.999
153.785	Public Safety	Mobile Only	88.613
153.790	Public Safety	Mobile Only	88.613
153.795	SMR	Innovative Shared	88.999

153.800	Public Safety	Mobile Only	88.613
153.805	Public Safety	Mobile Only	88.613
153.810	SMR	Innovative Shared	88.999
153.815	Public Safety	Mobile Only	88.613
153.820	Public Safety	Mobile Only	88.613
153.825	SMR	Innovative Shared	88.999
153.830	Public Safety	Mobile Only	88.613
153.835	Public Safety	Mobile Only	88.613
153.840	SMR	Innovative Shared	88.999
153.845	Public Safety	Mobile Only	88.613
153.850	Public Safety	Mobile Only	88.613
153.855	SMR	Innovative Shared	88.999
153.860	Public Safety	Mobile Only	88.613
153.865	Public Safety	Mobile Only	88.613
153.870	SMR	Innovative Shared	88.999
153.875	Public Safety	Mobile Only	88.613
153.880	Public Safety	Mobile Only	88.613
153.885	SMR	Innovative Shared	88.999
153.890	Public Safety	Mobile Only	88.613
153.895	Public Safety	Mobile Only	88.613
153.900	SMR	Innovative Shared	88.999
153.905	Public Safety	Mobile Only	88.613
153.910	Public Safety	Mobile Only	88.613
153.915	SMR	Innovative Shared	88.999
153.920	Public Safety	Mobile Only	88.613
153.925	Public Safety	Mobile Only	88.613
153.930	SMR	Innovative Shared	88.999
153.935	Public Safety	Mobile Only	88.613
153.940	Public Safety	Mobile Only	88.613
153.945	SMR	Innovative Shared	88.999
153.950	Public Safety	Mobile Only	88.613
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153.960	SMR	Innovative Shared	88.999
153.965	Public Safety	Mobile Only	88.613
153.970	Public Safety	Mobile Only	88.613
153.975	SMR	Innovative Shared	88.999
153.980	Public Safety	Mobile Only	88.613
153.985	Public Safety	Mobile Only	88.613
153.990	SMR	Innovative Shared	88.999
153.995	Public Safety	Mobile Only	88.613
154.000	Public Safety	Mobile Only	88.613
154.005	SMR	Innovative Shared	88.999
154.010	Public Safety	Mobile Only	88.613
154.015	Public Safety	Mobile Only	88.613
154.020	SMR	Innovative Shared	88.999
154.025	Public Safety		88.613
154.030	Public Safety		88.613
154.035	SMR	Innovative Shared	88.999
154.040	Public Safety	Unavailable in PR, VI	88.613
154.045	Public Safety	Unavailable in PR, VI	88.613
154.050	SMR	Innovative Shared	88.999
154.055	Public Safety	Unavailable in PR, VI	88.613
154.060	Public Safety	Unavailable in PR, VI	88.613
154.065	SMR	Innovative Shared	88.999
154.070	Public Safety	Mobile, Unavail in PR, VI	88.613

154.075	Public Safety	Mobile, Unavail in PR, VI	88.613
154.080	SMR	Innovative Shared	88.999
154.085	Public Safety	Unavailable in PR, VI	88.613
154.090	Public Safety	Unavailable in PR, VI	88.613
154.095	SMR	Innovative Shared	88.999
154.100	Public Safety	Unavailable in PR, VI	88.613
154.105	Public Safety	Unavailable in PR, VI	88.613
154.110	SMR	Innovative Shared	88.999
154.115	Public Safety	Unavailable in PR, VI	88.613
154.120	Public Safety	Unavailable in PR, VI	88.613
154.125	SMR	Innovative Shared	88.999
154.130	Public Safety	Unavailable in PR, VI	88.613
154.135	Public Safety	Unavailable in PR, VI	88.613
154.140	SMR	Innovative Shared	88.999
154.145	Public Safety	Unavailable in PR, VI	88.613
154.150	Public Safety	Unavailable in PR, VI	88.613
154.155	SMR	Innovative Shared	88.999
154.160	Public Safety	Unavailable in PR, VI	88.613
154.165	Public Safety	Unavailable in PR, VI	88.613
154.170	SMR	Innovative Shared	88.999
154.175	Public Safety	Unavailable in PR, VI	88.613
154.180	Public Safety	Unavailable in PR, VI	88.613
154.185	SMR	Innovative Shared	88.999
154.190	Public Safety	Unavailable in PR, VI	88.613
154.195	Public Safety	Unavailable in PR, VI	88.613
154.200	SMR	Innovative Shared	88.999
154.205	Public Safety	Unavailable in PR, VI	88.613
154.210	Public Safety	Unavailable in PR, VI	88.613
154.215	SMR	Innovative Shared	88.999
154.220	Public Safety	Unavailable in PR, VI	88.613
154.225	Public Safety	Unavailable in PR, VI	88.613
154.230	SMR	Innovative Shared	88.999
154.235	Public Safety	Unavailable in PR, VI	88.613
154.240	Public Safety	Unavailable in PR, VI	88.613
154.245	SMR	Innovative Shared	88.999
154.250	Public Safety	Unavailable in PR, VI	88.613
154.255	Public Safety	Unavailable in PR, VI	88.613
154.260	SMR	Innovative Shared	88.999
154.265	Public Safety	Unavailable in PR, VI	88.613
154.270	Public Safety	Unavailable in PR, VI	88.613
154.275	SMR	Innovative Shared	88.999
154.280	Public Safety	Unavailable in PR, VI	88.613
154.285	Public Safety	Unavailable in PR, VI	88.613
154.290	SMR	Innovative Shared	88.999
154.295	Public Safety	Unavailable in PR, VI	88.613
154.300	Public Safety	Unavailable in PR, VI	88.613
154.305	SMR	Innovative Shared	88.999
154.310	Public Safety	Unavailable in PR, VI	88.613
154.315	Public Safety	Unavailable in PR, VI	88.613
154.320	SMR	Innovative Shared	88.999
154.325	Public Safety	Unavailable in PR, VI	88.613
154.330	Public Safety	Unavailable in PR, VI	88.613
154.335	SMR	Innovative Shared	88.999
154.340	Public Safety	Unavailable in PR, VI	88.613
154.345	Public Safety	Unavailable in PR, VI	88.613

154.350	SMR	Innovative Shared	88.999
154.355	Public Safety	Unavailable in PR, VI	88.613
154.360	Public Safety	Unavailable in PR, VI	88.613
154.365	SMR	Innovative Shared	88.999
154.370	Public Safety	Unavailable in PR, VI	88.613
154.375	Public Safety	Unavailable in PR, VI	88.613
154.380	SMR	Innovative Shared	88.999
154.385	Public Safety	Unavailable in PR, VI	88.613
154.390	Public Safety	Unavailable in PR, VI	88.613
154.395	SMR	Innovative Shared	88.999
154.400	Public Safety	Unavailable in PR, VI	88.613
154.405	Public Safety	Unavailable in PR, VI	88.613
154.410	SMR	Innovative Shared	88.999
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154.420	Public Safety	Unavailable in PR, VI	88.613
154.425	SMR	Innovative Shared	88.999
154.430	Public Safety	Unavailable in PR, VI	88.613
154.435	Public Safety	Unavailable in PR, VI	88.613
154.440	SMR	Innovative Shared	88.999
154.445	Public Safety	Unavailable in PR, VI	88.613
154.450	Public Safety	Unavailable in PR, VI	88.613
154.45625	General Category	Telemetry	88.1295
154.46375	General Category	Telemetry	88.1295
154.47125	General Category	Telemetry	88.1295
154.475	Public Safety	Mutual Aid	88.1029
154.47875	General Category	Telemetry	88.1295
154.480	Public Safety	Mutual Aid	88.1029
154.485	SMR	Innovative Shared	88.999
154.490	Non-Commercial		88.617
154.495	Non-Commercial		88.617
154.500	SMR	Innovative Shared	88.999
154.505	General Category	Shared Use Only	88.625
154.510	General Category	Shared Use Only	88.625
154.515	General Category	Shared Use Only	88.625
154.520	General Category	Shared Use Only	88.625
154.525	General Category	Shared Use Only	88.625
154.530	General Category	Shared Use Only	88.625
154.535	SMR	Innovative Shared	88.999
154.540	General Category	Shared Use Only	88.625
154.545	General Category	Shared Use Only	88.625
154.550	SMR	Innovative Shared	88.999
154.555	General Category	Shared Use Only	88.625
154.560	General Category	Shared Use Only	88.625
154.565	SMR	Innovative Shared	88.999
154.570	General Category	Low Power	88.907
154.575	General Category	Low Power	88.907
154.580	SMR	Innovative Shared	88.999
154.585	Non-Commercial	Mobile Only, Oil Spill	88.617
154.595	SMR	Innovative Shared	88.999
154.600	General Category	Low Power	88.907
154.605	General Category	Low Power	88.907
154.610	SMR	Innovative Shared	88.999
154.625	General Category	Paging	88.1063
154.640	SMR	Innovative Shared	88.999
154.645	SMR	Innovative Shared	88.999

154.650	Public Safety	Mobile Only	88.613
154.655	Public Safety	Mobile Only	88.613
154.660	SMR	Innovative Shared	88.999
154.665	Public Safety		88.613
154.670	Public Safety		88.613
154.675	SMR	Innovative Shared	88.999
154.680	Public Safety		88.613
154.685	Public Safety		88.613
154.690	SMR	Innovative Shared	88.999
154.695	Public Safety		88.613
154.700	Public Safety		88.613
154.705	SMR	Innovative Shared	88.999
154.710	Public Safety	Mobile Only	88.613
154.715	Public Safety	Mobile Only	88.613
154.720	SMR	Innovative Shared	88.999
154.725	Public Safety		88.613
154.730	Public Safety		88.613
154.735	SMR	Innovative Shared	88.999
154.740	Public Safety		88.613
154.745	Public Safety		88.613
154.750	SMR	Innovative Shared	88.999
154.755	Public Safety		88.613
154.760	Public Safety		88.613
154.765	SMR	Innovative Shared	88.999
154.770	Public Safety	Mobile Only	88.613
154.775	Public Safety	Mobile Only	88.613
154.780	SMR	Innovative Shared	88.999
154.785	Public Safety		88.613
154.790	Public Safety		88.613
154.795	SMR	Innovative Shared	88.999
154.800	Public Safety		88.613
154.805	Public Safety		88.613
154.810	SMR	Innovative Shared	88.999
154.815	Public Safety		88.613
154.820	Public Safety		88.613
154.825	SMR	Innovative Shared	88.999
154.830	Public Safety	Mobile Only	88.613
154.835	Public Safety	Mobile Only	88.613
154.840	SMR	Innovative Shared	88.999
154.845	Public Safety		88.613
154.850	Public Safety		88.613
154.855	SMR	Innovative Shared	88.999
154.860	Public Safety		88.613
154.865	Public Safety		88.613
154.870	SMR	Innovative Shared	88.999
154.875	Public Safety		88.613
154.880	Public Safety		88.613
154.885	SMR	Innovative Shared	88.999
154.890	Public Safety	Mobile Only	88.613
154.895	Public Safety	Mobile Only	88.613
154.900	SMR	Innovative Shared	88.999
154.905	Public Safety		88.613
154.910	Public Safety		88.613
154.915	SMR	Innovative Shared	88.999
154.920	Public Safety		88.613

154.925	Public Safety		88.613
154.930	SMR	Innovative Shared	88.999
154.935	Public Safety		88.613
154.940	Public Safety		88.613
154.945	SMR	Innovative Shared	88.999
154.950	Public Safety	Mobile Only	88.613
154.955	Public Safety	Mobile Only	88.613
154.960	SMR	Innovative Shared	88.999
154.965	Public Safety		88.613
154.970	Public Safety		88.613
154.975	SMR	Innovative Shared	88.999
154.980	Public Safety		88.613
154.985	Public Safety		88.613
154.990	SMR	Innovative Shared	88.999
154.995	Public Safety		88.613
155.000	Public Safety		88.613
155.005	SMR	Innovative Shared	88.999
155.010	Public Safety		88.613
155.015	Public Safety		88.613
155.020	SMR	Innovative Shared	88.999
155.025	Public Safety		88.613
155.030	Public Safety		88.613
155.035	SMR	Innovative Shared	88.999
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155.045	Public Safety		88.613
155.050	SMR	Innovative Shared	88.999
155.055	Public Safety		88.613
155.060	Public Safety		88.613
155.065	SMR	Innovative Shared	88.999
155.070	Public Safety		88.613
155.075	Public Safety		88.613
155.080	SMR	Innovative Shared	88.999
155.085	Public Safety		88.613
155.090	Public Safety		88.613
155.095	SMR	Innovative Shared	88.999
155.100	Public Safety		88.613
155.105	Public Safety		88.613
155.110	SMR	Innovative Shared	88.999
155.115	Public Safety		88.613
155.120	Public Safety		88.613
155.125	SMR	Innovative Shared	88.999
155.130	Public Safety		88.613
155.135	Public Safety		88.613
155.140	SMR	Innovative Shared	88.999
155.145	Public Safety		88.613
155.150	Public Safety		88.613
155.155	SMR	Innovative Shared	88.999
155.160	Non-Commercial		88.617
155.165	Non-Commercial		88.617
155.170	SMR	Innovative Shared	88.999
155.175	Non-Commercial		88.617
155.180	Non-Commercial		88.617
155.185	SMR	Innovative Shared	88.999
155.190	Public Safety		88.613
155.195	Public Safety		88.613

155.200	SMR	Innovative Shared	88.999
155.205	Non-Commercial		88.617
155.210	Non-Commercial		88.617
155.215	SMR	Innovative Shared	88.999
155.220	Non-Commercial		88.617
155.225	Non-Commercial		88.617
155.230	SMR	Innovative Shared	88.999
155.235	Non-Commercial		88.617
155.240	Non-Commercial		88.617
155.245	SMR	Innovative Shared	88.999
155.250	Public Safety		88.613
155.255	Public Safety		88.613
155.260	SMR	Innovative Shared	88.999
155.265	Non-Commercial		88.617
155.270	Non-Commercial		88.617
155.275	SMR	Innovative Shared	88.999
155.280	Non-Commercial		88.617
155.285	Non-Commercial		88.617
155.290	SMR	Innovative Shared	88.999
155.295	Non-Commercial		88.617
155.300	Non-Commercial		88.617
155.305	SMR	Innovative Shared	88.999
155.310	Public Safety		88.613
155.315	Public Safety		88.613
155.320	SMR	Innovative Shared	88.999
155.325	Public Safety		88.613
155.330	Public Safety		88.613
155.335	SMR	Innovative Shared	88.999
155.340	Public Safety		88.613
155.345	Public Safety		88.613
155.350	SMR	Innovative Shared	88.999
155.355	Public Safety		88.613
155.360	Public Safety		88.613
155.365	SMR	Innovative Shared	88.999
155.370	Public Safety		88.613
155.375	Public Safety		88.613
155.380	SMR	Innovative Shared	88.999
155.385	Public Safety		88.613
155.390	Public Safety		88.613
155.395	SMR	Innovative Shared	88.999
155.400	Public Safety		88.613
155.405	Public Safety		88.613
155.410	General Category	Low Power	88.907
155.415	Public Safety		88.613
155.420	Public Safety		88.613
155.425	General Category	Low Power	88.907
155.430	Public Safety		88.613
155.435	Public Safety		88.613
155.440	General Category	Low Power	88.907
155.445	Public Safety		88.613
155.450	Public Safety		88.613
155.455	General Category	Low Power	88.907
155.460	Public Safety		88.613
155.465	Public Safety		88.613
155.470	General Category	Low Power	88.907

155.475	Public Safety	Police Emergency	88.1039
155.480	Public Safety	Police Emergency	88.1039
155.485	General Category	Low Power	88.907
155.490	Public Safety		88.613
155.495	Public Safety		88.613
155.500	General Category	Low Power	88.907
155.505	Public Safety		88.613
155.510	Public Safety		88.613
155.515	General Category	Low Power	88.907
155.520	Public Safety		88.613
155.525	Public Safety		88.613
155.530	General Category	Low Power	88.907
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155.540	Public Safety		88.613
155.545	General Category	Low Power	88.907
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155.560	General Category	Low Power	88.907
155.565	Public Safety		88.613
155.570	Public Safety		88.613
155.575	General Category	Low Power	88.907
155.580	Public Safety		88.613
155.585	Public Safety		88.613
155.590	General Category	Low Power	88.907
155.595	Public Safety		88.613
155.600	Public Safety		88.613
155.605	General Category	Low Power	88.907
155.610	Public Safety		88.613
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155.620	General Category	Low Power	88.907
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155.635	General Category	Low Power	88.907
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155.675	Public Safety		88.613
155.680	General Category	Low Power	88.907
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155.695	General Category	Low Power	88.907
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155.705	Public Safety		88.613
155.710	General Category	Low Power	88.907
155.715	Public Safety		88.613
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155.725	General Category	Low Power	88.907
155.730	Public Safety		88.613
155.735	Public Safety		88.613
155.740	General Category	Low Power	88.907
155.745	Public Safety		88.613

155.750	Public Safety		88.613
155.755	General Category	Low Power	88.907
155.760	Public Safety		88.613
155.765	Public Safety		88.613
155.770	SMR	Innovative Shared	88.999
155.775	Public Safety		88.613
155.780	Public Safety		88.613
155.785	SMR	Innovative Shared	88.999
155.790	Public Safety		88.613
155.795	Public Safety		88.613
155.800	SMR	Innovative Shared	88.999
155.805	Public Safety		88.613
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155.815	SMR	Innovative Shared	88.999
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155.830	SMR	Innovative Shared	88.999
155.835	Public Safety		88.613
155.840	Public Safety		88.613
155.845	SMR	Innovative Shared	88.999
155.850	Public Safety	Mobile Only	88.613
155.855	Public Safety	Mobile Only	88.613
155.860	SMR	Innovative Shared	88.999
155.865	Public Safety		88.613
155.870	Public Safety		88.613
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155.885	Public Safety		88.613
155.890	SMR	Innovative Shared	88.999
155.895	Public Safety		88.613
155.900	Public Safety		88.613
155.905	SMR	Innovative Shared	88.999
155.910	Public Safety	Mobile Only	88.613
155.915	Public Safety	Mobile Only	88.613
155.920	SMR	Innovative Shared	88.999
155.925	Public Safety		88.613
155.930	Public Safety		88.613
155.935	SMR	Innovative Shared	88.999
155.940	Public Safety		88.613
155.945	Public Safety		88.613
155.950	SMR	Innovative Shared	88.999
155.955	Public Safety		88.613
155.960	Public Safety		88.613
155.965	SMR	Innovative Shared	88.999
155.970	Public Safety	Mobile Only	88.613
155.975	Public Safety	Mobile Only	88.613
155.980	SMR	Innovative Shared	88.999
155.985	Public Safety	Mobile Only	88.613
155.990	Public Safety	Mobile Only	88.613
155.995	SMR	Innovative Shared	88.999
156.000	Public Safety	Mobile Only	88.613
156.005	Public Safety	Mobile Only	88.613
156.010	SMR	Innovative Shared	88.999
156.015	Public Safety	Mobile Only	88.613
156.020	Public Safety	Mobile Only	88.613

156.025	SMR	Innovative Shared	88.999
156.030	Public Safety	Mobile Only	88.613
156.035	Public Safety	Mobile Only	88.613
156.040	SMR	Innovative Shared	88.999
156.045	Public Safety	Mobile, Not New Orleans	88.613
156.050	Public Safety	Mobile, Not New Orleans	88.613
156.055	SMR	Innovative Shared	88.999
156.060	Public Safety	Mobile, Not New Orleans	88.613
156.065	Public Safety	Mobile, Not New Orleans	88.613
156.070	SMR	Innovative Shared	88.999
156.075	Public Safety	Mobile Only	88.613
156.080	Public Safety	Mobile Only	88.613
156.085	SMR	Innovative Shared	88.999
156.090	Public Safety	Mobile Only	88.613
156.095	Public Safety	Mobile Only	88.613
156.100	SMR	Innovative Shared	88.999
156.105	Public Safety		88.613
156.110	Public Safety		88.613
156.115	SMR	Innovative Shared	88.999
156.120	Public Safety		88.613
156.125	Public Safety		88.613
156.130	SMR	Innovative Shared	88.999
156.135	Public Safety		88.613
156.140	Public Safety		88.613
156.145	SMR	Innovative Shared	88.999
156.150	Public Safety	Mobile Only	88.613
156.155	Public Safety	Mobile Only	88.613
156.160	SMR	Innovative Shared	88.999
156.165	Public Safety	Unavail in New Orleans	88.613
156.170	Public Safety	Unavail in New Orleans	88.613
156.175	SMR	Innovative Shared	88.999
156.180	Public Safety	Unavail in New Orleans	88.613
156.185	Public Safety	Unavail in New Orleans	88.613
156.190	SMR	Innovative Shared	88.999
156.195	Public Safety		88.613
156.200	Public Safety		88.613
156.205	SMR	Innovative Shared	88.999
156.210	Public Safety		88.613
156.215	Public Safety		88.613
156.220	SMR	Innovative Shared	88.999
156.225	Public Safety		88.613
156.230	Public Safety		88.613
156.235	SMR	Innovative Shared	88.999
156.240	Public Safety		88.613
156.245	Public Safety		88.613
157.450	Non-Commercial	Paging	88.1063
157.465	SMR	Innovative Shared	88.999
157.470	Non-Commercial		88.617
157.475	Non-Commercial		88.617
157.480	SMR	Innovative Shared	88.999
157.485	Non-Commercial		88.617
157.490	Non-Commercial		88.617
157.495	SMR	Innovative Shared	88.999
157.500	Non-Commercial		88.617
157.505	Non-Commercial		88.617

157.510	SMR	Innovative Shared	88.999
157.515	Non-Commercial		88.617
157.520	Non-Commercial		88.617
157.525	SMR	Innovative Shared	88.999
157.530	Non-Commercial	Mobile Only, Paired	88.617
157.535	Non-Commercial	Mobile Only, Paired	88.617
157.540	SMR	Innovative Shared	88.999
157.545	Non-Commercial	Mobile Only, Paired	88.617
157.550	Non-Commercial	Mobile Only, Paired	88.617
157.555	SMR	Innovative Shared	88.999
157.560	Non-Commercial	Mobl, Paired, Gen-PR/VI	88.617
157.565	Non-Commercial	Mobl, Paired, Gen-PR/VI	88.617
157.570	SMR	Innovative Shared	88.999
157.575	Non-Commercial	Mobl, Paired, Gen-PR/VI	88.617
157.580	Non-Commercial	Mobl, Paired, Gen-PR, VI	88.617
157.585	SMR	Innovative Shared	88.999
157.590	Non-Commercial	Mobile Only, Paired	88.617
157.595	Non-Commercial	Mobile Only, Paired	88.617
157.600	SMR	Innovative Shared	88.999
157.605	Non-Commercial	Mobl, Paired, Gen-PR/VI	88.617
157.610	Non-Commercial	Mobl, Paired, Gen-PR/VI	88.617
157.615	SMR	Innovative Shared	88.999
157.620	Non-Commercial	Mobl, Paired, Gen-PR/VI	88.617
157.625	Non-Commercial	Mobl, Paired, Gen-PR/VI	88.617
157.630	SMR	Innovative Shared	88.999
157.635	Non-Commercial	Mobl, Paired, Gen-PR/VI	88.617
157.640	Non-Commercial	Mobl, Paired, Gen-PR/VI	88.617
157.645	SMR	Innovative Shared	88.999
157.650	Non-Commercial	Mobile Only, Paired	88.617
157.655	Non-Commercial	Mobile Only, Paired	88.617
157.660	SMR	Innovative Shared	88.999
157.665	Non-Commercial	Mobl, Paired, Gen-PR/VI	88.617
157.670	Non-Commercial	Mobl, Paired, Gen-PR/VI	88.617
157.675	SMR	Innovative Shared	88.999
157.680	Non-Commercial	Mobl, Paired, Gen-PR/VI	88.617
157.685	Non-Commercial	Mobl, Paired, Gen-PR/VI	88.617
157.690	SMR	Innovative Shared	88.999
157.695	Non-Commercial	Mobile Only, Paired	88.617
157.700	Non-Commercial	Mobile Only, Paired	88.617
157.705	SMR	Innovative Shared	88.999
157.710	Non-Commercial	Mobile Only, Paired	88.617
157.715	Non-Commercial	Mobile Only, Paired	88.617
157.720	Non-Commercial	Mobile Only, Paired	88.617
157.725	Non-Commercial	Mobile Only, Paired	88.617
157.740	General Category	Paging	88.1063
158.125	SMR	Innovative Shared	88.999
158.130	Non-Commercial		88.617
158.135	Non-Commercial		88.617
158.140	SMR	Innovative Shared	88.999
158.145	Non-Commercial		88.617
158.150	Non-Commercial		88.617
158.155	SMR	Innovative Shared	88.999
158.160	Non-Commercial		88.617
158.165	Non-Commercial		88.617
158.170	SMR	Innovative Shared	88.999

158.175	Non-Commercial		88.617
158.180	Non-Commercial		88.617
158.185	SMR	Innovative Shared	88.999
158.190	Non-Commercial		88.617
158.195	Non-Commercial		88.617
158.200	SMR	Innovative Shared	88.999
158.205	Non-Commercial		88.617
158.210	Non-Commercial		88.617
158.215	SMR	Innovative Shared	88.999
158.220	Non-Commercial		88.617
158.225	Non-Commercial		88.617
158.230	SMR	Innovative Shared	88.999
158.235	Non-Commercial		88.617
158.240	Non-Commercial		88.617
158.245	SMR	Innovative Shared	88.999
158.250	Non-Commercial		88.617
158.255	Non-Commercial		88.617
158.260	SMR	Innovative Shared	88.999
158.265	Non-Commercial		88.617
158.270	Non-Commercial		88.617
158.275	SMR	Innovative Shared	88.999
158.280	Non-Commercial		88.617
158.285	Non-Commercial		88.617
158.290	SMR	Innovative Shared	88.999
158.295	Non-Commercial		88.617
158.300	Non-Commercial		88.617
158.305	SMR	Innovative Shared	88.999
158.310	Non-Commercial		88.617
158.315	Non-Commercial		88.617
158.320	SMR	Innovative Shared	88.999
158.325	Non-Commercial		88.617
158.330	Non-Commercial		88.617
158.335	SMR	Innovative Shared	88.999
158.340	Non-Commercial	Mobile Only	88.617
158.345	Non-Commercial		88.617
158.350	SMR	Innovative Shared	88.999
158.355	Non-Commercial		88.617
158.360	Non-Commercial		88.617
158.365	SMR	Innovative Shared	88.999
158.370	Non-Commercial		88.617
158.375	Non-Commercial		88.617
158.380	SMR	Innovative Shared	88.999
158.385	Non-Commercial		88.617
158.390	Non-Commercial		88.617
158.395	SMR	Innovative Shared	88.999
158.400	General Category	Itinerant	88.953
158.405	General Category	Itinerant	88.953
158.410	SMR	Innovative Shared	88.999
158.415	Non-Commercial		88.617
158.420	Non-Commercial		88.617
158.425	SMR	Innovative Shared	88.999
158.430	Non-Commercial		88.617
158.435	Non-Commercial		88.617
158.440	Non-Commercial	Oil Spill	88.617
158.445	Non-Commercial	Mobile Only, Oil Spill	88.617

158.460	General Category	Paging	88.1063
158.725	SMR	Innovative Shared	88.999
158.730	Public Safety		88.613
158.735	Public Safety		88.613
158.740	SMR	Innovative Shared	88.999
158.745	Public Safety		88.613
158.750	Public Safety		88.613
158.755	SMR	Innovative Shared	88.999
158.760	Public Safety		88.613
158.765	Public Safety		88.613
158.770	SMR	Innovative Shared	88.999
158.775	Public Safety		88.613
158.780	Public Safety		88.613
158.785	SMR	Innovative Shared	88.999
158.790	Public Safety		88.613
158.795	Public Safety		88.613
158.800	SMR	Innovative Shared	88.999
158.805	Public Safety		88.613
158.810	Public Safety		88.613
158.815	SMR	Innovative Shared	88.999
158.820	Public Safety		88.613
158.825	Public Safety		88.613
158.830	SMR	Innovative Shared	88.999
158.835	Public Safety		88.613
158.840	Public Safety		88.613
158.845	SMR	Innovative Shared	88.999
158.850	Public Safety		88.613
158.855	Public Safety		88.613
158.860	SMR	Innovative Shared	88.999
158.865	Public Safety	Mobile Only	88.613
158.870	Public Safety	Mobile Only	88.613
158.875	SMR	Innovative Shared	88.999
158.880	Public Safety	Mobile Only	88.613
158.885	Public Safety	Mobile Only	88.613
158.890	SMR	Innovative Shared	88.999
158.895	Public Safety	Mobile Only	88.613
158.900	Public Safety	Mobile Only	88.613
158.905	SMR	Innovative Shared	88.999
158.910	Public Safety	Mobile Only	88.613
158.915	Public Safety	Mobile Only	88.613
158.920	SMR	Innovative Shared	88.999
158.925	Public Safety	Mobile Only	88.613
158.930	Public Safety	Mobile Only	88.613
158.935	SMR	Innovative Shared	88.999
158.940	Public Safety	Mobile Only	88.613
158.945	Public Safety	Mobile Only	88.613
158.950	SMR	Innovative Shared	88.999
158.955	Public Safety	Mobile Only	88.613
158.960	Public Safety	Mobile Only	88.613
158.965	SMR	Innovative Shared	88.999
158.970	Public Safety	Mobile Only	88.613
158.975	Public Safety	Mobile Only	88.613
158.980	SMR	Innovative Shared	88.999
158.985	Public Safety	Mobile Only	88.613
158.990	Public Safety	Mobile Only	88.613

158.995	SMR	Innovative Shared	88.999
159.000	Public Safety	Mobile Only	88.613
159.005	Public Safety	Mobile Only	88.613
159.010	SMR	Innovative Shared	88.999
159.015	Public Safety	Mobile Only	88.613
159.020	Public Safety	Mobile Only	88.613
159.025	SMR	Innovative Shared	88.999
159.030	Public Safety	Mobile Only	88.613
159.035	Public Safety	Mobile Only	88.613
159.040	SMR	Innovative Shared	88.999
159.045	Public Safety	Mobile Only	88.613
159.050	Public Safety	Mobile Only	88.613
159.055	SMR	Innovative Shared	88.999
159.060	Public Safety	Mobile Only	88.613
159.065	Public Safety	Mobile Only	88.613
159.070	SMR	Innovative Shared	88.999
159.075	Public Safety	Mobile Only	88.613
159.080	Public Safety	Mobile Only	88.613
159.085	SMR	Innovative Shared	88.999
159.090	Public Safety		88.613
159.095	Public Safety		88.613
159.100	SMR	Innovative Shared	88.999
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159.115	SMR	Innovative Shared	88.999
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159.125	Public Safety		88.613
159.130	SMR	Innovative Shared	88.999
159.135	Public Safety		88.613
159.140	Public Safety		88.613
159.145	SMR	Innovative Shared	88.999
159.150	Public Safety		88.613
159.155	Public Safety		88.613
159.160	SMR	Innovative Shared	88.999
159.165	Public Safety		88.613
159.170	Public Safety		88.613
159.175	SMR	Innovative Shared	88.999
159.180	Public Safety		88.613
159.185	Public Safety		88.613
159.190	SMR	Innovative Shared	88.999
159.195	Public Safety		88.613
159.200	Public Safety		88.613
159.205	SMR	Innovative Shared	88.999
159.210	Public Safety		88.613
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159.220	SMR	Innovative Shared	88.999
159.225	Public Safety		88.613
159.230	Public Safety		88.613
159.235	SMR	Innovative Shared	88.999
159.240	Public Safety	Non-Commercial-PR, VI	88.613
159.245	Public Safety	Non-Commercial-PR, VI	88.613
159.250	SMR	Innovative Shared	88.999
159.255	Public Safety	Non-Commercial-PR, VI	88.613
159.260	Public Safety	Non-Commercial-PR, VI	88.613
159.265	SMR	Innovative Shared	88.999

159.270	Public Safety	Non-Commercial-PR, VI	88.613
159.275	Public Safety	Non-Commercial-PR, VI	88.613
159.280	SMR	Innovative Shared	88.999
159.285	Public Safety	Non-Commercial-PR, VI	88.613
159.290	Public Safety	Non-Commercial-PR, VI	88.613
159.295	SMR	Innovative Shared	88.999
159.300	Public Safety	Non-Commercial-PR, VI	88.613
159.305	Public Safety	Non-Commercial-PR, VI	88.613
159.310	SMR	Innovative Shared	88.999
159.315	Public Safety	Non-Commercial-PR, VI	88.613
159.320	Public Safety	Non-Commercial-PR, VI	88.613
159.325	SMR	Innovative Shared	88.999
159.330	Public Safety	Non-Commercial-PR, VI	88.613
159.335	Public Safety	Non-Commercial-PR, VI	88.613
159.340	SMR	Innovative Shared	88.999
159.345	Public Safety	Non-Commercial-PR, VI	88.613
159.350	Public Safety	Non-Commercial-PR, VI	88.613
159.355	SMR	Innovative Shared	88.999
159.360	Public Safety	Non-Commercial-PR, VI	88.613
159.365	Public Safety	Non-Commercial-PR, VI	88.613
159.370	SMR	Innovative Shared	88.999
159.375	Public Safety	Non-Commercial-PR, VI	88.613
159.380	Public Safety	Non-Commercial-PR, VI	88.613
159.385	SMR	Innovative Shared	88.999
159.390	Public Safety	Non-Commercial-PR, VI	88.613
159.395	Public Safety	Non-Commercial-PR, VI	88.613
159.400	SMR	Innovative Shared	88.999
159.405	Public Safety	Non-Commercial-PR, VI	88.613
159.410	Public Safety	Non-Commercial-PR, VI	88.613
159.415	SMR	Innovative Shared	88.999
159.420	Public Safety	Non-Commercial-PR, VI	88.613
159.425	Public Safety	Non-Commercial-PR, VI	88.613
159.430	SMR	Innovative Shared	88.999
159.435	Public Safety	Non-Commercial-PR, VI	88.613
159.440	Public Safety	Non-Commercial-PR, VI	88.613
159.445	SMR	Innovative Shared	88.999
159.450	Public Safety		88.613
159.455	Public Safety		88.613
159.460	SMR	Innovative Shared	88.999
159.465	Public Safety		88.613
159.470	Public Safety		88.613
159.475	SMR	Innovative Shared	88.999
159.480	Non-Commercial	Oil Spill	88.617
159.485	Non-Commercial	Oil Spill	88.617
159.490	SMR	Innovative Shared	88.999
159.495	Non-Commercial		88.617
159.500	Non-Commercial		88.617
159.505	SMR	Innovative Shared	88.999
159.510	Non-Commercial		88.617
159.515	Non-Commercial		88.617
159.520	SMR	Innovative Shared	88.999
159.525	Non-Commercial		88.617
159.530	Non-Commercial		88.617
159.535	SMR	Innovative Shared	88.999
159.540	Non-Commercial		88.617

159.545	Non-Commercial		88.617
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159.590	Non-Commercial		88.617
159.595	SMR	Innovative Shared	88.999
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159.605	Non-Commercial		88.617
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159.620	Non-Commercial		88.617
159.625	SMR	Innovative Shared	88.999
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159.805	SMR	Innovative Shared	88.999
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159.815	Non-Commercial		88.617

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159.980	Non-Commercial		88.617
159.985	SMR	Innovative Shared	88.999
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159.995	Non-Commercial		88.617
160.000	SMR	Innovative Shared	88.999
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160.075	SMR	Innovative Shared	88.999
160.080	Non-Commercial		88.617
160.085	Non-Commercial		88.617
160.090	SMR	Innovative Shared	88.999

160.095	Non-Commercial		88.617
160.100	Non-Commercial		88.617
160.105	SMR	Innovative Shared	88.999
160.110	Non-Commercial		88.617
160.115	Non-Commercial		88.617
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160.125	Non-Commercial		88.617
160.130	Non-Commercial		88.617
160.135	SMR	Innovative Shared	88.999
160.140	Non-Commercial		88.617
160.145	Non-Commercial		88.617
160.150	SMR	Innovative Shared	88.999
160.155	Non-Commercial		88.617
160.160	Non-Commercial		88.617
160.165	SMR	Innovative Shared	88.999
160.170	Non-Commercial		88.617
160.175	Non-Commercial		88.617
160.180	SMR	Innovative Shared	88.999
160.185	Non-Commercial		88.617
160.190	Non-Commercial		88.617
160.195	SMR	Innovative Shared	88.999
160.200	Non-Commercial		88.617
160.205	Non-Commercial		88.617
160.210	SMR	Innovative Shared	88.999
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160.220	Non-Commercial		88.617
160.225	SMR	Innovative Shared	88.999
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160.235	Non-Commercial		88.617
160.240	SMR	Innovative Shared	88.999
160.245	Non-Commercial		88.617
160.250	Non-Commercial		88.617
160.255	SMR	Innovative Shared	88.999
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160.265	Non-Commercial		88.617
160.270	SMR	Innovative Shared	88.999
160.275	Non-Commercial		88.617
160.280	Non-Commercial		88.617
160.285	SMR	Innovative Shared	88.999
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160.295	Non-Commercial		88.617
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160.305	Non-Commercial		88.617
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160.315	SMR	Innovative Shared	88.999
160.320	Non-Commercial		88.617
160.325	Non-Commercial		88.617
160.330	SMR	Innovative Shared	88.999
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160.340	Non-Commercial		88.617
160.345	SMR	Innovative Shared	88.999
160.350	Non-Commercial		88.617
160.355	Non-Commercial		88.617
160.360	SMR	Innovative Shared	88.999
160.365	Non-Commercial		88.617

160.370	Non-Commercial		88.617
160.375	SMR	Innovative Shared	88.999
160.380	Non-Commercial		88.617
160.385	Non-Commercial		88.617
160.390	SMR	Innovative Shared	88.999
160.395	Non-Commercial		88.617
160.400	Non-Commercial		88.617
160.405	SMR	Innovative Shared	88.999
160.410	Non-Commercial		88.617
160.415	Non-Commercial		88.617
160.420	SMR	Innovative Shared	88.999
160.425	Non-Commercial		88.617
160.430	Non-Commercial		88.617
160.435	SMR	Innovative Shared	88.999
160.440	Non-Commercial		88.617
160.445	Non-Commercial		88.617
160.450	SMR	Innovative Shared	88.999
160.455	Non-Commercial		88.617
160.460	Non-Commercial		88.617
160.465	SMR	Innovative Shared	88.999
160.470	Non-Commercial		88.617
160.475	Non-Commercial		88.617
160.480	SMR	Innovative Shared	88.999
160.485	Non-Commercial		88.617
160.490	Non-Commercial		88.617
160.495	SMR	Innovative Shared	88.999
160.500	Non-Commercial		88.617
160.505	Non-Commercial		88.617
160.510	SMR	Innovative Shared	88.999
160.515	Non-Commercial		88.617
160.520	Non-Commercial		88.617
160.525	SMR	Innovative Shared	88.999
160.530	Non-Commercial		88.617
160.535	Non-Commercial		88.617
160.540	SMR	Innovative Shared	88.999
160.545	Non-Commercial		88.617
160.550	Non-Commercial		88.617
160.555	SMR	Innovative Shared	88.999
160.560	Non-Commercial		88.617
160.565	Non-Commercial		88.617
160.570	SMR	Innovative Shared	88.999
160.575	Non-Commercial		88.617
160.580	Non-Commercial		88.617
160.585	SMR	Innovative Shared	88.999
160.590	Non-Commercial		88.617
160.595	Non-Commercial		88.617
160.600	SMR	Innovative Shared	88.999
160.605	Non-Commercial		88.617
160.610	Non-Commercial		88.617
160.615	SMR	Innovative Shared	88.999
160.620	Non-Commercial		88.617
160.625	Non-Commercial		88.617
160.630	SMR	Innovative Shared	88.999
160.635	Non-Commercial		88.617
160.640	Non-Commercial		88.617

160.645	SMR	Innovative Shared	88.999
160.650	Non-Commercial		88.617
160.655	Non-Commercial		88.617
160.660	SMR	Innovative Shared	88.999
160.665	Non-Commercial		88.617
160.670	Non-Commercial		88.617
160.675	SMR	Innovative Shared	88.999
160.680	Non-Commercial		88.617
160.685	Non-Commercial		88.617
160.690	SMR	Innovative Shared	88.999
160.695	Non-Commercial		88.617
160.700	Non-Commercial		88.617
160.705	SMR	Innovative Shared	88.999
160.710	Non-Commercial		88.617
160.715	Non-Commercial		88.617
160.720	SMR	Innovative Shared	88.999
160.725	Non-Commercial		88.617
160.730	Non-Commercial		88.617
160.735	SMR	Innovative Shared	88.999
160.740	Non-Commercial		88.617
160.745	Non-Commercial		88.617
160.750	SMR	Innovative Shared	88.999
160.755	Non-Commercial		88.617
160.760	Non-Commercial		88.617
160.765	SMR	Innovative Shared	88.999
160.770	Non-Commercial		88.617
160.775	Non-Commercial		88.617
160.780	SMR	Innovative Shared	88.999
160.785	Non-Commercial		88.617
160.790	Non-Commercial		88.617
160.795	SMR	Innovative Shared	88.999
160.800	Non-Commercial		88.617
160.805	Non-Commercial		88.617
160.810	SMR	Innovative Shared	88.999
160.815	Non-Commercial		88.617
160.820	Non-Commercial		88.617
160.825	SMR	Innovative Shared	88.999
160.830	Non-Commercial		88.617
160.835	Non-Commercial		88.617
160.840	SMR	Innovative Shared	88.999
160.845	Non-Commercial		88.617
160.850	Non-Commercial		88.617
160.855	SMR	Innovative Shared	88.999
160.860	Non-Commercial		88.617
160.865	Non-Commercial		88.617
160.870	SMR	Innovative Shared	88.999
160.875	Non-Commercial		88.617
160.880	Non-Commercial		88.617
160.885	SMR	Innovative Shared	88.999
160.890	Non-Commercial		88.617
160.895	Non-Commercial		88.617
160.900	SMR	Innovative Shared	88.999
160.905	Non-Commercial		88.617
160.910	Non-Commercial		88.617
160.915	SMR	Innovative Shared	88.999

160.920	Non-Commercial		88.617
160.925	Non-Commercial		88.617
160.930	SMR	Innovative Shared	88.999
160.935	Non-Commercial		88.617
160.940	Non-Commercial		88.617
160.945	SMR	Innovative Shared	88.999
160.950	Non-Commercial		88.617
160.955	Non-Commercial		88.617
160.960	SMR	Innovative Shared	88.999
160.965	Non-Commercial		88.617
160.970	Non-Commercial		88.617
160.975	SMR	Innovative Shared	88.999
160.980	Non-Commercial		88.617
160.985	Non-Commercial		88.617
160.990	SMR	Innovative Shared	88.999
160.995	Non-Commercial		88.617
161.000	Non-Commercial		88.617
161.005	SMR	Innovative Shared	88.999
161.010	Non-Commercial		88.617
161.015	Non-Commercial		88.617
161.020	SMR	Innovative Shared	88.999
161.025	Non-Commercial		88.617
161.030	Non-Commercial		88.617
161.035	SMR	Innovative Shared	88.999
161.040	Non-Commercial		88.617
161.045	Non-Commercial		88.617
161.050	SMR	Innovative Shared	88.999
161.055	Non-Commercial		88.617
161.060	Non-Commercial		88.617
161.065	SMR	Innovative Shared	88.999
161.070	Non-Commercial		88.617
161.075	Non-Commercial		88.617
161.080	SMR	Innovative Shared	88.999
161.085	Non-Commercial		88.617
161.090	Non-Commercial		88.617
161.095	SMR	Innovative Shared	88.999
161.100	Non-Commercial		88.617
161.105	Non-Commercial		88.617
161.110	SMR	Innovative Shared	88.999
161.115	Non-Commercial		88.617
161.120	Non-Commercial		88.617
161.125	SMR	Innovative Shared	88.999
161.130	Non-Commercial		88.617
161.135	Non-Commercial		88.617
161.140	SMR	Innovative Shared	88.999
161.145	Non-Commercial		88.617
161.150	Non-Commercial		88.617
161.155	SMR	Innovative Shared	88.999
161.160	Non-Commercial		88.617
161.165	Non-Commercial		88.617
161.170	SMR	Innovative Shared	88.999
161.175	Non-Commercial		88.617
161.180	Non-Commercial		88.617
161.185	SMR	Innovative Shared	88.999
161.190	Non-Commercial		88.617

161.195	Non-Commercial		88.617
161.200	SMR	Innovative Shared	88.999
161.205	Non-Commercial		88.617
161.210	Non-Commercial		88.617
161.215	SMR	Innovative Shared	88.999
161.220	Non-Commercial		88.617
161.225	Non-Commercial		88.617
161.230	SMR	Innovative Shared	88.999
161.235	Non-Commercial		88.617
161.240	Non-Commercial		88.617
161.245	SMR	Innovative Shared	88.999
161.250	Non-Commercial		88.617
161.255	Non-Commercial		88.617
161.260	SMR	Innovative Shared	88.999
161.265	Non-Commercial		88.617
161.270	Non-Commercial		88.617
161.275	SMR	Innovative Shared	88.999
161.280	Non-Commercial		88.617
161.285	Non-Commercial		88.617
161.290	SMR	Innovative Shared	88.999
161.295	Non-Commercial		88.617
161.300	Non-Commercial		88.617
161.305	SMR	Innovative Shared	88.999
161.310	Non-Commercial		88.617
161.315	Non-Commercial		88.617
161.320	SMR	Innovative Shared	88.999
161.325	Non-Commercial		88.617
161.330	Non-Commercial		88.617
161.335	SMR	Innovative Shared	88.999
161.340	Non-Commercial		88.617
161.345	Non-Commercial		88.617
161.350	SMR	Innovative Shared	88.999
161.355	Non-Commercial		88.617
161.360	Non-Commercial		88.617
161.365	SMR	Innovative Shared	88.999
161.370	Non-Commercial		88.617
161.375	Non-Commercial		88.617
161.380	SMR	Innovative Shared	88.999
161.385	Non-Commercial	Unavailable in PR, VI	88.617
161.390	Non-Commercial	Unavailable in PR, VI	88.617
161.395	SMR	Innovative Shared	88.999
161.400	Non-Commercial	Unavailable in PR, VI	88.617
161.405	Non-Commercial	Unavailable in PR, VI	88.617
161.410	SMR	Innovative Shared	88.999
161.415	Non-Commercial	Unavailable in PR, VI	88.617
161.420	Non-Commercial	Unavailable in PR, VI	88.617
161.425	SMR	Innovative Shared	88.999
161.430	Non-Commercial	Unavailable in PR, VI	88.617
161.435	Non-Commercial	Unavailable in PR, VI	88.617
161.440	SMR	Innovative Shared	88.999
161.445	Non-Commercial	Unavailable in PR, VI	88.617
161.450	Non-Commercial	Unavailable in PR, VI	88.617
161.455	SMR	Innovative Shared	88.999
161.460	Non-Commercial	Unavailable in PR, VI	86.617
161.465	Non-Commercial	Unavailable in PR, VI	88.617

161.470	SMR	Innovative Shared	88.999
161.475	Non-Commercial	Unavailable in PR, VI	88.617
161.480	Non-Commercial	Unavailable in PR, VI	88.617
161.485	SMR	Innovative Shared	88.999
161.490	Non-Commercial	Unavailable in PR, VI	88.617
161.495	Non-Commercial	Unavailable in PR, VI	88.617
161.500	SMR	Innovative Shared	88.999
161.505	Non-Commercial	Unavailable in PR, VI	88.617
161.510	Non-Commercial	Unavailable in PR, VI	88.617
161.515	SMR	Innovative Shared	88.999
161.520	Non-Commercial	Unavailable in PR, VI	88.617
161.525	Non-Commercial	Unavailable in PR, VI	88.617
161.530	SMR	Innovative Shared	88.999
161.535	Non-Commercial	Unavailable in PR, VI	88.617
161.540	Non-Commercial	Unavailable in PR, VI	88.617
161.545	SMR	Innovative Shared	88.999
161.550	Non-Commercial	Unavailable in PR, VI	88.617
161.555	Non-Commercial	Unavailable in PR, VI	88.617
161.560	SMR	Innovative Shared	88.999
161.565	Non-Commercial	Unavailable in PR, VI	88.617
161.570	Non-Commercial	Unavailable in PR, VI	88.617
163.250	Non-Commercial	Paging	88.1063
169.425	General Category	Hydro- or Metrological	88.1333
169.445	General Category	Wireless Microphone	88.931
169.450	General Category	Hydro- or Metrological	88.1333
169.475	General Category	Hydro- or Metrological	88.1333
169.500	General Category	Hydro- or Metrological	88.1333
169.505	General Category	Wireless Microphone	88.931
169.525	General Category	Hydro- or Metrological	88.1333
170.225	General Category	Hydro- or Metrological	88.1333
170.245	General Category	Wireless Microphone	88.931
170.250	General Category	Hydro- or Metrological	88.1333
170.275	General Category	Hydro- or Metrological	88.1333
170.300	General Category	Hydro- or Metrological	88.1333
170.305	General Category	Wireless Microphone	88.931
170.325	General Category	Hydro- or Metrological	88.1333
170.425	Public Safety	West of the Mississippi	88.765
170.475	Public Safety	East of the Mississippi	88.765
170.575	Public Safety	West of the Mississippi	88.765
171.025	General Category	Hydro- or Metrological	88.1333
171.045	General Category	Wireless Microphone	88.931
171.050	General Category	Hydro- or Metrological	88.1333
171.075	General Category	Hydro- or Metrological	88.1333
171.100	General Category	Hydro- or Metrological	88.1333
171.105	General Category	Wireless Microphone	88.931
171.125	General Category	Hydro- or Metrological	88.1333
171.425	Public Safety	East of the Mississippi	88.765
171.475	Public Safety	West of the Mississippi	88.765
171.575	Public Safety	East of the Mississippi	88.765
171.825	General Category	Hydro- or Metrological	88.1333
171.845	General Category	Wireless Microphone	88.931
171.850	General Category	Hydro- or Metrological	88.1333
171.875	General Category	Hydro- or Metrological	88.1333
171.900	General Category	Hydro- or Metrological	88.1333
171.905	General Category	Wireless Microphone	88.931

171.925	General Category	Hydro- or Metrological	88.1333
172.225	Public Safety	West of the Mississippi	88.765
172.275	Public Safety	East of the Mississippi	88.765
172.375	Public Safety	West of the Mississippi	88.765
173.075	General Category	Stolen Vehicle Recovery	88.1145
173.20375	General Category	Telemetry	88.1295
173.2100	General Category	Telemetry	88.1295
173.220	Non-Commercial		88.617
173.225	Non-Commercial		88.617
173.230	Non-Commercial		88.617
173.2375	General Category	Telemetry	88.1295
173.245	Non-Commercial		88.617
173.250	Non-Commercial		88.617
173.255	Non-Commercial		88.617
173.2625	General Category	Telemetry	88.1295
173.270	Non-Commercial		88.617
173.275	Non-Commercial		88.617
173.280	Non-Commercial		88.617
173.2875	General Category	Telemetry	88.1295
173.295	Non-Commercial		88.617
173.300	Non-Commercial		88.617
173.305	Non-Commercial		88.617
173.3125	General Category	Telemetry	88.1295
173.320	Non-Commercial		88.617
173.325	Non-Commercial		88.617
173.330	Non-Commercial		88.617
173.3375	General Category	Telemetry	88.1295
173.345	Non-Commercial		88.617
173.350	Non-Commercial		88.617
173.355	Non-Commercial		88.617
173.360	Non-Commercial		88.617
173.3625	General Category	Telemetry	88.1295
173.375	Non-Commercial		88.617
173.380	Non-Commercial		88.617
173.3900	General Category	Telemetry	88.1295
173.39625	General Category	Telemetry	88.1295
220.0025	General Category	Trunked, Separation	88.625
220.0075	General Category	Trunked, Separation	88.625
220.0125	General Category	Trunked, Separation	88.625
220.0175	General Category	Trunked, Separation	88.625
220.0225	General Category	Trunked, Separation	88.625
220.0275	General Category	Trunked, Separation	88.625
220.0325	General Category	Trunked, Separation	88.625
220.0375	General Category	Trunked, Separation	88.625
220.0425	General Category	Trunked, Separation	88.625
220.0475	General Category	Trunked, Separation	88.625
220.0525	General Category	Trunked, Separation	88.625
220.0575	General Category	Trunked, Separation	88.625
220.0625	General Category	Trunked, Separation	88.625
220.0675	General Category	Trunked, Separation	88.625
220.0725	General Category	Trunked, Separation	88.625
220.0775	General Category	Trunked, Separation	88.625
220.0825	General Category	Trunked, Separation	88.625
220.0875	General Category	Trunked, Separation	88.625
220.0925	General Category	Trunked, Separation	88.625

220.0975	General Category	Trunked, Separation	88.625
220.1025	General Category	Nationwide	88.977
220.1075	General Category	Nationwide	88.977
220.1125	General Category	Nationwide	88.977
220.1175	General Category	Nationwide	88.977
220.1225	General Category	Nationwide	88.977
220.1275	General Category	Nationwide	88.977
220.1325	General Category	Nationwide	88.977
220.1375	General Category	Nationwide	88.977
220.1425	General Category	Nationwide	88.977
220.1475	General Category	Nationwide	88.977
220.1525	General Category	Trunked, Separation	88.625
220.1575	General Category	Trunked, Separation	88.625
220.1625	General Category	Trunked, Separation	88.625
220.1675	General Category	Trunked, Separation	88.625
220.1725	General Category	Trunked, Separation	88.625
220.1775	General Category	Trunked, Separation	88.625
220.1825	General Category	Trunked, Separation	88.625
220.1875	General Category	Trunked, Separation	88.625
220.1925	General Category	Trunked, Separation	88.625
220.1975	General Category	Trunked, Separation	88.625
220.2025	General Category	Trunked	88.625
220.2075	General Category	Trunked	88.625
220.2125	General Category	Trunked	88.625
220.2175	General Category	Trunked	88.625
220.2225	General Category	Trunked	88.625
220.2275	General Category	Trunked	88.625
220.2325	General Category	Trunked	88.625
220.2375	General Category	Trunked	88.625
220.2425	General Category	Trunked	88.625
220.2475	General Category	Trunked	88.625
220.2525	Non-Commercial	Nationwide	88.977
220.2575	Non-Commercial	Nationwide	88.977
220.2625	Non-Commercial	Nationwide	88.977
220.2675	Non-Commercial	Nationwide	88.977
220.2725	Non-Commercial	Nationwide	88.977
220.2775	Non-Commercial	Nationwide	88.977
220.2825	Non-Commercial	Nationwide	88.977
220.2875	Non-Commercial	Nationwide	88.977
220.2925	Non-Commercial	Nationwide	88.977
220.2975	Non-Commercial	Nationwide	88.977
220.3025	General Category	Trunked	88.625
220.3075	General Category	Trunked	88.625
220.3125	General Category	Trunked	88.625
220.3175	General Category	Trunked	88.625
220.3225	General Category	Trunked	88.625
220.3275	General Category	Trunked	88.625
220.3325	General Category	Trunked	88.625
220.3375	General Category	Trunked	88.625
220.3425	General Category	Trunked	88.625
220.3475	General Category	Trunked	88.625
220.3525	General Category	Trunked	88.625
220.3575	General Category	Trunked	88.625
220.3625	General Category	Trunked	88.625
220.3675	General Category	Trunked	88.625

220.3725	General Category	Trunked	88.625
220.3775	General Category	Trunked	88.625
220.3825	General Category	Trunked	88.625
220.3875	General Category	Trunked	88.625
220.3925	General Category	Trunked	88.625
220.3975	General Category	Trunked	88.625
220.4025	Non-Commercial	Nationwide	88.977
220.4075	Non-Commercial	Nationwide	88.977
220.4125	Non-Commercial	Nationwide	88.977
220.4175	Non-Commercial	Nationwide	88.977
220.4225	Non-Commercial	Nationwide	88.977
220.4275	Non-Commercial	Nationwide	88.977
220.4325	Non-Commercial	Nationwide	88.977
220.4375	Non-Commercial	Nationwide	88.977
220.4425	Non-Commercial	Nationwide	88.977
220.4475	Non-Commercial	Nationwide	88.977
220.4525	General Category	Trunked	88.625
220.4575	General Category	Trunked	88.625
220.4625	General Category	Trunked	88.625
220.4675	General Category	Trunked	88.625
220.4725	General Category	Trunked	88.625
220.4775	General Category	Trunked	88.625
220.4825	General Category	Trunked	88.625
220.4875	General Category	Trunked	88.625
220.4925	General Category	Trunked	88.625
220.4975	General Category	Trunked	88.625
220.5025	General Category	Trunked	88.625
220.5075	General Category	Trunked	88.625
220.5125	General Category	Trunked	88.625
220.5175	General Category	Trunked	88.625
220.5225	General Category	Trunked	88.625
220.5275	General Category	Trunked	88.625
220.5325	General Category	Trunked	88.625
220.5375	General Category	Trunked	88.625
220.5425	General Category	Trunked	88.625
220.5475	General Category	Trunked	88.625
220.5525	Federal Gov't	Nationwide	88.977
220.5575	Federal Gov't	Nationwide	88.977
220.5625	Federal Gov't	Nationwide	88.977
220.5675	Federal Gov't	Nationwide	88.977
220.5725	Federal Gov't	Nationwide	88.977
220.5775	Federal Gov't	Nationwide	88.977
220.5825	Federal Gov't	Nationwide	88.977
220.5875	Federal Gov't	Nationwide	88.977
220.5925	Federal Gov't	Nationwide	88.977
220.5975	Federal Gov't	Nationwide	88.977
220.6025	General Category	Trunked	88.625
220.6075	General Category	Trunked	88.625
220.6125	General Category	Trunked	88.625
220.6175	General Category	Trunked	88.625
220.6225	General Category	Trunked	88.625
220.6275	General Category	Trunked	88.625
220.6325	General Category	Trunked	88.625
220.6375	General Category	Trunked	88.625
220.6425	General Category	Trunked	88.625

220.6475	General Category	Trunked	88.625
220.6525	General Category	Trunked	88.625
220.6575	General Category	Trunked	88.625
220.6625	General Category	Trunked	88.625
220.6675	General Category	Trunked	88.625
220.6725	General Category	Trunked	88.625
220.6775	General Category	Trunked	88.625
220.6825	General Category	Trunked	88.625
220.6875	General Category	Trunked	88.625
220.6925	General Category	Trunked	88.625
220.6975	General Category	Trunked	88.625
220.7025	Non-Commercial	Nationwide	88.977
220.7075	Non-Commercial	Nationwide	88.977
220.7125	Non-Commercial	Nationwide	88.977
220.7175	Non-Commercial	Nationwide	88.977
220.7225	Non-Commercial	Nationwide	88.977
220.7275	Non-Commercial	Nationwide	88.977
220.7325	Non-Commercial	Nationwide	88.977
220.7375	Non-Commercial	Nationwide	88.977
220.7425	Non-Commercial	Nationwide	88.977
220.7475	Non-Commercial	Nationwide	88.977
220.7525	General Category	Nationwide	88.977
220.7575	General Category	Nationwide	88.977
220.7625	General Category	Nationwide	88.977
220.7675	General Category	Nationwide	88.977
220.7725	General Category	Nationwide	88.977
220.7775	General Category	Nationwide	88.977
220.7825	General Category	Nationwide	88.977
220.7875	General Category	Nationwide	88.977
220.7925	General Category	Nationwide	88.977
220.7975	General Category	Nationwide	88.977
220.8025	Public Safety	Mutual Aid	88.1029
220.8075	Public Safety	Mutual Aid	88.1029
220.8125	Public Safety	Mutual Aid	88.1029
220.8175	Public Safety	Mutual Aid	88.1029
220.8225	Public Safety	Mutual Aid	88.1029
220.8275	Public Safety	Mutual Aid	88.1029
220.8325	Public Safety	Mutual Aid	88.1029
220.8375	Public Safety	Mutual Aid	88.1029
220.8425	Public Safety	Mutual Aid	88.1029
220.8475	Public Safety	Mutual Aid	88.1029
220.8525	General Category	Individual, Separation	88.625
220.8575	General Category	Individual, Separation	88.625
220.8625	General Category	Individual, Separation	88.625
220.8675	General Category	Individual, Separation	88.625
220.8725	General Category	Individual, Separation	88.625
220.8775	General Category	Individual, Separation	88.625
220.8825	General Category	Individual, Separation	88.625
220.8875	General Category	Individual, Separation	88.625
220.8925	General Category	Individual, Separation	88.625
220.8975	General Category	Individual, Separation	88.625
220.9025	Public Safety	Individual Chn, EMS	88.613
220.9075	Public Safety	Individual Chn, EMS	88.613
220.9125	Public Safety	Individual Chn, EMS	88.613
220.9175	Public Safety	Individual Chn, EMS	88.613

220.9225	Public Safety	Individual Chn, EMS	88.613
220.9275	General Category	Individual, Separation	88.625
220.9325	General Category	Individual, Separation	88.625
220.9375	General Category	Individual, Separation	88.625
220.9425	General Category	Individual, Separation	88.625
220.9475	General Category	Individual, Separation	88.625
220.9525	General Category	Individual, Separation	88.625
220.9575	General Category	Individual, Separation	88.625
220.9625	General Category	Individual, Separation	88.625
220.9675	General Category	Individual, Separation	88.625
220.9725	General Category	Individual, Separation	88.625
220.9775	General Category	Low Power	88.907
220.9825	General Category	Low Power	88.907
220.9875	General Category	Low Power	88.907
220.9925	General Category	Low Power	88.907
220.9975	General Category	Low Power	88.907
221.9775	General Category	Low Power	88.907
221.9825	General Category	Low Power	88.907
221.9875	General Category	Low Power	88.907
221.9925	General Category	Low Power	88.907
221.9975	General Category	Low Power	88.907
406.125	General Category	Hydro- or Metrological	88.1333
406.175	General Category	Hydro- or Metrological	88.1333
409.675	General Category	Hydro- or Metrological	88.1333
409.725	General Category	Hydro- or Metrological	88.1333
412.625	General Category	Hydro- or Metrological	88.1333
412.675	General Category	Hydro- or Metrological	88.1333
412.725	General Category	Hydro- or Metrological	88.1333
412.775	General Category	Hydro- or Metrological	88.1333
421-430		Three Border Cities	88.775
451.015625	Non-Commercial		88.617
451.021875	Non-Commercial		88.617
451.028125	Non-Commercial		88.617
451.034375	Non-Commercial		88.617
451.0375	General Category	Low Power	88.907
451.040625	Non-Commercial		88.617
451.046875	Non-Commercial		88.617
451.053125	Non-Commercial		88.617
451.059375	Non-Commercial		88.617
451.0625	General Category	Low Power	88.907
451.065625	Non-Commercial		88.617
451.071875	Non-Commercial		88.617
451.078125	Non-Commercial		88.617
451.084375	Non-Commercial		88.617
451.0875	General Category	Low Power	88.907
451.090625	Non-Commercial		88.617
451.096875	Non-Commercial		88.617
451.103125	Non-Commercial		88.617
451.109375	Non-Commercial		88.617
451.1125	General Category	Low Power	88.907
451.115625	Non-Commercial		88.617
451.121875	Non-Commercial		88.617
451.128125	Non-Commercial		88.617
451.134375	Non-Commercial		88.617
451.1375	General Category	Low Power	88.907

451.140625	Non-Commercial		88.617
451.146875	Non-Commercial		88.617
451.153125	Non-Commercial		88.617
451.159375	Non-Commercial		88.617
451.1625	General Category	Low Power	88.907
451.165625	Non-Commercial		88.617
451.171875	Non-Commercial		88.617
451.178125	Non-Commercial		88.617
451.184375	Non-Commercial		88.617
451.1875	General Category	Low Power	88.907
451.190625	Non-Commercial		88.617
451.196875	Non-Commercial		88.617
451.203125	Non-Commercial		88.617
451.209375	Non-Commercial		88.617
451.2125	General Category	Low Power	88.907
451.215625	Non-Commercial		88.617
451.221875	Non-Commercial		88.617
451.228125	Non-Commercial		88.617
451.234375	Non-Commercial		88.617
451.2375	General Category	Low Power	88.907
451.240625	Non-Commercial		88.617
451.246875	Non-Commercial		88.617
451.253125	Non-Commercial		88.617
451.259375	Non-Commercial		88.617
451.2625	General Category	Low Power	88.907
451.265625	Non-Commercial		88.617
451.271875	Non-Commercial		88.617
451.278125	Non-Commercial		88.617
451.284375	Non-Commercial		88.617
451.2875	General Category	Low Power	88.907
451.290625	Non-Commercial		88.617
451.296875	Non-Commercial		88.617
451.303125	Non-Commercial		88.617
451.309375	Non-Commercial		88.617
451.3125	General Category	Low Power	88.907
451.315625	Non-Commercial		88.617
451.321875	Non-Commercial		88.617
451.328125	Non-Commercial		88.617
451.334375	Non-Commercial		88.617
451.3375	General Category	Low Power	88.907
451.340625	Non-Commercial		88.617
451.346875	Non-Commercial		88.617
451.353125	Non-Commercial		88.617
451.359375	Non-Commercial		88.617
451.3625	General Category	Low Power	88.907
451.365625	Non-Commercial		88.617
451.371875	Non-Commercial		88.617
451.378125	Non-Commercial		88.617
451.384375	Non-Commercial		88.617
451.3875	General Category	Low Power	88.907
451.390625	Non-Commercial		88.617
451.396875	Non-Commercial		88.617
451.403125	Non-Commercial		88.617
451.409375	Non-Commercial		88.617
451.4125	General Category	Low Power	88.907

451.415625	Non-Commercial		88.617
451.421875	Non-Commercial		88.617
451.428125	Non-Commercial		88.617
451.434375	Non-Commercial		88.617
451.4375	General Category	Low Power	88.907
451.440625	Non-Commercial		88.617
451.446875	Non-Commercial		88.617
451.453125	Non-Commercial		88.617
451.459375	Non-Commercial		88.617
451.4625	General Category	Low Power	88.907
451.465625	Non-Commercial		88.617
451.471875	Non-Commercial		88.617
451.478125	Non-Commercial		88.617
451.484375	Non-Commercial		88.617
451.4875	General Category	Low Power	88.907
451.490625	Non-Commercial		88.617
451.496875	Non-Commercial		88.617
451.503125	Non-Commercial		88.617
451.509375	Non-Commercial		88.617
451.5125	General Category	Low Power	88.907
451.515625	Non-Commercial		88.617
451.521875	Non-Commercial		88.617
451.528125	Non-Commercial		88.617
451.534375	Non-Commercial		88.617
451.5375	General Category	Low Power	88.907
451.540625	Non-Commercial		88.617
451.546875	Non-Commercial		88.617
451.553125	Non-Commercial		88.617
451.559375	Non-Commercial		88.617
451.5625	General Category	Low Power	88.907
451.565625	Non-Commercial		88.617
451.571875	Non-Commercial		88.617
451.578125	Non-Commercial		88.617
451.584375	Non-Commercial		88.617
451.5875	General Category	Low Power	88.907
451.590625	Non-Commercial		88.617
451.596875	Non-Commercial		88.617
451.603125	Non-Commercial		88.617
451.609375	Non-Commercial		88.617
451.6125	General Category	Low Power	88.907
451.615625	Non-Commercial		88.617
451.621875	Non-Commercial		88.617
451.628125	Non-Commercial		88.617
451.634375	Non-Commercial		88.617
451.6375	General Category	Low Power	88.907
451.640625	Non-Commercial		88.617
451.646875	Non-Commercial		88.617
451.653125	Non-Commercial		88.617
451.659375	Non-Commercial		88.617
451.6625	General Category	Low Power	88.907
451.665625	Non-Commercial		88.617
451.671875	Non-Commercial		88.617
451.678125	Non-Commercial		88.617
451.684375	Non-Commercial		88.617
451.6875	General Category	Low Power	88.907

451.690625	Non-Commercial		88.617
451.696875	Non-Commercial		88.617
451.703125	Non-Commercial		88.617
451.709375	Non-Commercial		88.617
451.7125	General Category	Low Power	88.907
451.715625	Non-Commercial		88.617
451.721875	Non-Commercial		88.617
451.728125	Non-Commercial		88.617
451.734375	Non-Commercial		88.617
451.7375	General Category	Low Power	88.907
451.740625	Non-Commercial		88.617
451.746875	Non-Commercial		88.617
451.753125	Non-Commercial		88.617
451.759375	Non-Commercial		88.617
451.7625	General Category	Low Power	88.907
451.765625	Non-Commercial		88.617
451.771875	Non-Commercial		88.617
451.778125	Non-Commercial		88.617
451.784375	Non-Commercial		88.617
451.7875	Non-Commercial	Offset	88.617
451.790625	General Category	Itinerant	88.953
451.796875	General Category	Itinerant	88.953
451.803125	General Category	Itinerant	88.953
451.809375	General Category	Itinerant	88.953
451.8125	Non-Commercial	Offset	88.617
451.815625	Non-Commercial		88.617
451.821875	Non-Commercial		88.617
451.828125	Non-Commercial		88.617
451.834375	Non-Commercial		88.617
451.8375	Non-Commercial	Offset	88.617
451.840625	Non-Commercial		88.617
451.846875	Non-Commercial		88.617
451.853125	Non-Commercial		88.617
451.859375	Non-Commercial		88.617
451.8625	Non-Commercial	Offset	88.617
451.865625	Non-Commercial		88.617
451.871875	Non-Commercial		88.617
451.878125	Non-Commercial		88.617
451.884375	Non-Commercial		88.617
451.8875	Non-Commercial	Offset	88.617
451.890625	Non-Commercial		88.617
451.896875	Non-Commercial		88.617
451.903125	Non-Commercial		88.617
451.909375	Non-Commercial		88.617
451.9125	Non-Commercial	Offset	88.617
451.915625	Non-Commercial		88.617
451.921875	Non-Commercial		88.617
451.928125	Non-Commercial		88.617
451.934375	Non-Commercial		88.617
451.9375	Non-Commercial	Offset	88.617
451.940625	Non-Commercial		88.617
451.946875	Non-Commercial		88.617
451.953125	Non-Commercial		88.617
451.959375	Non-Commercial		88.617
451.9625	Non-Commercial	Offset	88.617

451.965625	Non-Commercial		88.617
451.971875	Non-Commercial		88.617
451.978125	Non-Commercial		88.617
451.984375	Non-Commercial		88.617
451.9875	Non-Commercial	Offset	88.617
451.990625	Non-Commercial		88.617
451.996875	Non-Commercial		88.617
452.003125	Non-Commercial		88.617
452.009375	Non-Commercial		88.617
452.0125	NON-Commercial	Offset	88.617
452.015625	Non-Commercial		88.617
452.021875	Non-Commercial		88.617
452.028125	Non-Commercial		88.617
452.034375	Non-Commercial		88.617
452.0375	General Category	Low Power	88.907
452.040625	Non-Commercial		88.617
452.046875	Non-Commercial		88.617
452.053125	Non-Commercial		88.617
452.059375	Non-Commercial		88.617
452.0625	General Category	Low Power	88.907
452.065625	Non-Commercial		88.617
452.071875	Non-Commercial		88.617
452.078125	Non-Commercial		88.617
452.084375	Non-Commercial		88.617
452.0875	General Category	Low Power	88.907
452.090625	Non-Commercial		88.617
452.096875	Non-Commercial		88.617
452.103125	Non-Commercial		88.617
452.109375	Non-Commercial		88.617
452.1125	General Category	Low Power	88.907
452.115625	Non-Commercial		88.617
452.121875	Non-Commercial		88.617
452.128125	Non-Commercial		88.617
452.134375	Non-Commercial		88.617
452.1375	General Category	Low Power	88.907
452.140625	Non-Commercial		88.617
452.146875	Non-Commercial		88.617
452.153125	Non-Commercial		88.617
452.159375	Non-Commercial		88.617
452.1625	General Category	Low Power	88.907
452.165625	Non-Commercial		88.617
452.171875	Non-Commercial		88.617
452.178125	Non-Commercial		88.617
452.184375	Non-Commercial		88.617
452.1875	General Category	Low Power	88.907
452.190625	Non-Commercial		88.617
452.196875	Non-Commercial		88.617
452.203125	Non-Commercial		88.617
452.209375	Non-Commercial		88.617
452.2125	General Category	Low Power	88.907
452.215625	Non-Commercial		88.617
452.221875	Non-Commercial		88.617
452.228125	Non-Commercial		88.617
452.234375	Non-Commercial		88.617
452.2375	General Category	Low Power	88.907

452.240625	Non-Commercial		88.617
452.246875	Non-Commercial		88.617
452.253125	Non-Commercial		88.617
452.259375	Non-Commercial		88.617
452.2625	General Category	Low Power	88.907
452.265625	Non-Commercial		88.617
452.271875	Non-Commercial		88.617
452.278125	Non-Commercial		88.617
452.284375	Non-Commercial		88.617
452.2875	General Category	Low Power	88.907
452.290625	Non-Commercial		88.617
452.296875	Non-Commercial		88.617
452.303125	Non-Commercial		88.617
452.309375	Non-Commercial		88.617
452.3125	General Category	Low Power	88.907
452.315625	Non-Commercial		88.617
452.321875	Non-Commercial		88.617
452.328125	Non-Commercial		88.617
452.334375	Non-Commercial		88.617
452.3375	General Category	Low Power	88.907
452.340625	Non-Commercial		88.617
452.346875	Non-Commercial		88.617
452.353125	Non-Commercial		88.617
452.359375	Non-Commercial		88.617
452.3625	General Category	Low Power	88.907
452.365625	Non-Commercial		88.617
452.371875	Non-Commercial		88.617
452.378125	Non-Commercial		88.617
452.384375	Non-Commercial		88.617
452.3875	General Category	Low Power	88.907
452.390625	Non-Commercial		88.617
452.396875	Non-Commercial		88.617
452.403125	Non-Commercial		88.617
452.409375	Non-Commercial		88.617
452.4125	General Category	Low Power	88.907
452.415625	Non-Commercial		88.617
452.421875	Non-Commercial		88.617
452.428125	Non-Commercial		88.617
452.434375	Non-Commercial		88.617
452.4375	General Category	Low Power	88.907
452.440625	Non-Commercial		88.617
452.446875	Non-Commercial		88.617
452.453125	Non-Commercial		88.617
452.459375	Non-Commercial		88.617
452.4625	General Category	Low Power	88.907
452.465625	Non-Commercial		88.617
452.471875	Non-Commercial		88.617
452.478125	Non-Commercial		88.617
452.484375	Non-Commercial		88.617
452.4875	General Category	Low Power	88.907
452.490625	Non-Commercial		88.617
452.496875	Non-Commercial		88.617
452.503125	Non-Commercial		88.617
452.509375	Non-Commercial		88.617
452.5125	General Category	Low Power	88.907

452.515625	Non-Commercial	Simplex	88.617
452.521875	Non-Commercial	Simplex	88.617
452.528125	Non-Commercial	Simplex	88.617
452.534375	Non-Commercial	Simplex	88.617
452.5375	General Category	Low Power	88.907
452.540625	Non-Commercial	Simplex	88.617
452.546875	Non-Commercial	Simplex	88.617
452.553125	Non-Commercial	Simplex	88.617
452.559375	Non-Commercial	Simplex	88.617
452.5625	General Category	Low Power	88.907
452.565625	Non-Commercial	Simplex	88.617
452.571875	Non-Commercial	Simplex	88.617
452.578125	Non-Commercial	Simplex	88.617
452.584375	Non-Commercial	Simplex	88.617
452.5875	General Category	Low Power	88.907
452.590625	Non-Commercial	Simplex	88.617
452.596875	Non-Commercial	Simplex	88.617
452.603125	Non-Commercial	Simplex	88.617
452.609375	Non-Commercial	Simplex	88.617
452.6125	General Category	Low Power	88.907
452.615625	Non-Commercial		88.617
452.621875	Non-Commercial		88.617
452.628125	Non-Commercial		88.617
452.634375	Non-Commercial		88.617
452.6375	General Category	Low Power	88.907
452.640625	Non-Commercial		88.617
452.646875	Non-Commercial		88.617
452.653125	Non-Commercial		88.617
452.659375	Non-Commercial		88.617
452.6625	General Category	Low Power	88.907
452.665625	Non-Commercial		88.617
452.671875	Non-Commercial		88.617
452.678125	Non-Commercial		88.617
452.684375	Non-Commercial		88.617
452.6875	General Category	Low Power	88.907
452.690625	Non-Commercial		88.617
452.696875	Non-Commercial		88.617
452.703125	Non-Commercial		88.617
452.709375	Non-Commercial		88.617
452.7125	General Category	Low Power	88.907
452.715625	Non-Commercial		88.617
452.721875	Non-Commercial		88.617
452.728125	Non-Commercial		88.617
452.734375	Non-Commercial		88.617
452.7375	General Category	Low Power	88.907
452.740625	Non-Commercial		88.617
452.746875	Non-Commercial		88.617
452.753125	Non-Commercial		88.617
452.759375	Non-Commercial		88.617
452.7625	General Category	Low Power	88.907
452.765625	Non-Commercial		88.617
452.771875	Non-Commercial		88.617
452.778125	Non-Commercial		88.617
452.784375	Non-Commercial		88.617
452.7875	General Category	Low Power	88.907

452.790625	Non-Commercial		88.617
452.796875	Non-Commercial		88.617
452.803125	Non-Commercial		88.617
452.809375	Non-Commercial		88.617
452.8125	General Category	Low Power	88.907
452.815625	Non-Commercial		88.617
452.821875	Non-Commercial		88.617
452.828125	Non-Commercial		88.617
452.834375	Non-Commercial		88.617
452.8375	General Category	Low Power	88.907
452.840625	Non-Commercial		88.617
452.846875	Non-Commercial		88.617
452.853125	Non-Commercial		88.617
452.859375	Non-Commercial		88.617
452.8625	General Category	Low Power	88.907
452.865625	Non-Commercial		88.617
452.871875	Non-Commercial		88.617
452.878125	Non-Commercial		88.617
452.884375	Non-Commercial		88.617
452.8875	General Category	Low Power	88.907
452.890625	Non-Commercial		88.617
452.896875	Non-Commercial		88.617
452.903125	Non-Commercial		88.617
452.909375	Non-Commercial		88.617
452.9125	General Category	Low Power	88.907
452.915625	Non-Commercial	Locomotive	88.617
452.921875	Non-Commercial	Locomotive	88.617
452.928125	Non-Commercial	Locomotive	88.617
452.934375	Non-Commercial	Locomotive	88.617
452.9375	General Category	Low Power	88.907
452.940625	Non-Commercial	Locomotive	88.617
452.946875	Non-Commercial	Locomotive	88.617
452.953125	Non-Commercial	Locomotive	88.617
452.959375	Non-Commercial	Locomotive	88.617
452.9625	General Category	Low Power	88.907
452.965625	Non-Commercial		88.617
452.971875	Non-Commercial		88.617
452.978125	Non-Commercial		88.617
452.984375	Non-Commercial		88.617
452.9875	General Category	Low Power	88.907
452.990625	Non-Commercial		88.617
452.996875	Non-Commercial		88.617
453.003125	Non-Commercial		88.617
453.009375	Non-Commercial		88.617
453.0125	Public Safety	Low Power	88.907
453.015625	Public Safety		88.613
453.021875	Public Safety		88.613
453.025	Public Safety	Grandfathered Paging	88.1555
453.028125	Public Safety		88.613
453.034375	Public Safety		88.613
453.0375	Public Safety	Low Power	88.907
453.040625	Public Safety		88.613
453.046875	Public Safety		88.613
453.053125	Public Safety		88.613
453.059375	Public Safety		88.613

453.0625	Public Safety	Low Power	88.907
453.065625	Public Safety		88.613
453.071875	Public Safety		88.613
453.075	Public Safety	Grandfathered Paging	88.1555
453.078125	Public Safety		88.613
453.084375	Public Safety		88.613
453.0875	Public Safety	Low Power	88.907
453.090625	Public Safety		88.613
453.096875	Public Safety		88.613
453.103125	Public Safety		88.613
453.109375	Public Safety		88.613
453.1125	Public Safety	Low Power	88.907
453.115625	Public Safety		88.613
453.121875	Public Safety		88.613
453.125	Public Safety	Grandfathered Paging	88.1555
453.128125	Public Safety		88.613
453.134375	Public Safety		88.613
453.1375	Public Safety	Low Power	88.907
453.140625	Public Safety		88.613
453.146875	Public Safety		88.613
453.153125	Public Safety		88.613
453.159375	Public Safety		88.613
453.1625	Public Safety	Low Power	88.907
453.165625	Public Safety		88.613
453.171875	Public Safety		88.613
453.175	Public Safety	Grandfathered Paging	88.555
453.178125	Public Safety		88.613
453.184375	Public Safety		88.613
453.1875	Public Safety	Low Power	88.907
453.190625	Public Safety		88.613
453.196875	Public Safety		88.613
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456.4125	General Category	Low Power	88.907
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460.6375	Public Safety	Low Power	88.907
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460.653125	Non-Commercial	Airport	88.617
460.659375	Non-Commercial	Airport	88.617
460.6625	General Category	Low Power	88.907
460.665625	Non-Commercial	Airport	88.617
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460.678125	Non-Commercial	Airport	88.617
460.684375	Non-Commercial	Airport	88.617
460.6875	General Category	Low Power	88.907
460.690625	Non-Commercial	Airport	88.617
460.696875	Non-Commercial	Airport	88.617
460.703125	Non-Commercial	Airport	88.617
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460.7125	General Category	Low Power	88.907
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460.7375	General Category	Low Power	88.907
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460.8375	General Category	Low Power	88.907
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460.878125	Non-Commercial	Airport	88.617
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462.8125	General Category	Low Power	88.907
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462.8625	General Category	Low Power	88.907
462.875	General Category	Paging	88.1063
462.8875	General Category	Low Power	88.907
462.900	General Category	Paging	88.1063
462.9125	General Category	Low Power	88.907
462.925	General Category	Paging	88.1063
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462.940625	Public Safety		88.613
462.946875	Public Safety	MEDS-9A	88.613
462.953125	Public Safety	MEDS-9B	88.613
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462.978125	Public Safety	MEDS-10B	88.613
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463.103125	Public Safety	MEDS-5B	88.613
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463.121875	Public Safety	MEDS-6A	88.613

463.128125	Public Safety	MEDS-6B	88.613
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463.153125	Public Safety	MEDS-7B	88.613
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463.178125	Public Safety	MEDS-8B	88.613
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464.209375	General Category		88.625
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464.221875	General Category		88.625

464.228125	General Category		88.625
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464.271875	General Category		88.625
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464.296875	General Category		88.625
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464.309375	General Category		88.625
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464.459375	General Category	Low Power	88.907
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464.496875	General Category	Itinerant	88.953

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464.5375	General Category	Low Power	88.907
464.540625	General Category	Itinerant	88.953
464.546875	General Category	Itinerant	88.953
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464.559375	General Category	Itinerant	88.953
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464.565625	General Category	Low Power	88.907
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464.578125	General Category		88.625
464.584375	General Category	Low Power	88.907
464.5875	General Category	Low Power	88.907
464.590625	General Category	Itinerant	88.953
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464.603125	General Category		88.625
464.609375	General Category	Itinerant	88.953
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464.615625	General Category	Low Power	88.907
464.621875	General Category		88.625
464.628125	General Category		88.625
464.634375	General Category	Low Power	88.907
464.6375	General Category	Low Power	88.907
464.640625	General Category	Itinerant	88.953
464.646875	General Category		88.625
464.653125	General Category		88.625
464.659375	General Category	Itinerant	88.953
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464.671875	General Category		88.625
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465.000	General Category	Paging	88.1063
465.0125	Public Safety	Low Power	88.907
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467.5125	General Category	Low Power	88.907
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467.753125	Non-Commercial	Low Power	88.907
467.759375	Non-Commercial	Low Power	88.907
467.7625	General Category	Low Power	88.907
467.765625	Non-Commercial	Low Power	88.907
467.771875	Non-Commercial	Low Power	88.907
467.778125	Non-Commercial	Low Power	88.907
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467.7875	General Category	Low Power	88.907
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467.8125	General Category	Low Power	88.907
467.815625	Non-Commercial	Low Power	88.907
467.821875	Non-Commercial	Low Power	88.907
467.828125	Non-Commercial	Low Power	88.907
467.834375	Non-Commercial	Low Power	88.907
467.8375	General Category	Low Power	88.907

467.840625	Non-Commercial	Low Power	88.907
467.846875	Non-Commercial	Low Power	88.907
467.853125	Non-Commercial	Low Power	88.907
467.859375	Non-Commercial	Low Power	88.907
467.8625	General Category	Low Power	88.907
467.865625	Non-Commercial	Low Power	88.907
467.871875	Non-Commercial	Low Power	88.907
467.878125	Non-Commercial	Low Power	88.907
467.884375	Non-Commercial	Low Power	88.907
467.8875	General Category	Low Power	88.907
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467.921875	Non-Commercial	Low Power	88.907
467.928125	Non-Commercial	Low Power	88.907
467.934375	Non-Commercial	Low Power	88.907
467.9375	Public Safety	Low Power	88.907
467.9625	Public Safety	Low Power	88.907
467.9875	Public Safety	Low Power	88.907
468.0125	Public Safety	Low Power	88.907
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469.540625	General Category	Itinerant	88.953
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469.559375	General Category	Itinerant	88.953
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469.609375	General Category	Itinerant	88.953
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469.959375	General Category	Low Power	88.907
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469.984375	General Category	Low Power	88.907
470-512		11 Markets Only	88.873
851.0125	General Category	Restricted Trunking	88.625
851.0375	General Category	Restricted Trunking	88.625
851.0625	General Category	Restricted Trunking	88.625
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851.1125	General Category	Restricted Trunking	88.625
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865.8375	SMR		88.621
865.8625	SMR		88.621
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935.2000	General Category		88.625

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935.2875	SMR	88.621
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935.3625	SMR	88.621
935.3750	SMR	88.621
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935.4000	Non-Commercial	88.617
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935.9750	Non-Commercial	88.617
935.9875	Non-Commercial	88.617
936.0000	Non-Commercial	88.617
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937.2375	General Category	88.625
937.2500	General Category	88.625
937.2625	SMR	88.621

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937.9750	Non-Commercial	88.617
937.9875	Non-Commercial	88.617
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938.0250	SMR	88.621
938.0375	SMR	88.621
938.0500	SMR	88.621
938.0625	SMR	88.621
938.0750	SMR	88.621
938.0875	SMR	88.621
938.1000	SMR	88.621
938.1125	SMR	88.621
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938.1750	General Category	88.625
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938.2000	General Category	88.625
938.2125	General Category	88.625
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GRANDFATHERING PROVISIONS

§ 88.1551 General grandfathering provision.

Unless otherwise specified in this part, all licensees may indefinitely continue operating based upon the conditions of their authorization.

§ 88.1555 Temporarily grandfathered paging frequencies.

Paging licensees licensed as of March 20, 1991 may continue to operate on a primary basis until [5 years from adoption of R&O in PR Docket No. 91-72] on the frequencies 453.025, 453.075, 453.125 and 453.175 MHz.

§ 88.1559 Grandfathering provision for secondary fixed signaling.

Until December 31, 1999, for systems in the Public Safety Radio Service authorized prior to June 20, 1975, and Power and Petroleum industry entities authorized prior to June 1, 1976, the maximum duration of any signaling transmission must not exceed 6 seconds and shall not be repeated more than 5 times. For Power industry systems authorized between June 1, 1976 and (effective date of rules), signaling duration must not exceed 2 seconds and must not be repeated more than 5 times. Such systems include existing facilities and additional facilities that may be authorized as a clear and direct expansion of existing facilities. After December 31, 1999, all signaling systems must comply with the two second message duration and three message repetition requirements.

§ 88.1563 Grandfathered power/antenna heights and bandwidths.

All stations operating in the 150-174 and 450-470 MHz bands must meet the power/antenna height limitations in Table C-3 at § 88.429(d) and bandwidth limitations at footnote 1, Table C-1 at § 88.413 by January 1, 1996. Stations licensed prior to (effective date of rules) must meet those limits for all trunked channels, and new sites or new frequencies granted after (effective date of rules). In addition, any existing system receiving an exclusive use overlay (EUO) license must meet these limits within 6 months of the grant of the EUO license.

§ 88.1601 Urban areas.

	Urban Area	North Longitude	West Latitude
		0 ' "	0 ' "
1.	New York, NY- Northeastern NJ	40 45 06	73 59 39
2.	Los Angeles-Long Beach, California	34 03 15	118 14 28
3.	Chicago, Illinois -- Northwestern Indiana	41 52 28	87 38 22
4.	Philadelphia, Pennsylvania/New Jersey	39 56 58	75 09 21
5.	Detroit, Michigan	42 19 48	83 02 57
6.	Boston, Massachusetts	42 21 24	71 03 25
7.	San Francisco-Oakland, California	37 46 39	122 24 40
8.	Washington, D.C./Maryland/Virgnia	38 53 51	77 00 33
9.	Dallas-Fort Worth, Texas	32 47 09	96 47 37
10.	Houston, Texas	29 45 26	95 21 37
11.	St. Louis, Missouri/Illinois	38 37 45	90 12 22
12.	Miami, Florida	25 46 37	80 11 32
13.	Pittsburgh, Pennsylvania	40 26 19	80 00 00
14.	Baltimore, Maryland	39 17 26	76 36 45
15.	Minneapolis-St. Paul, Minnesota	44 58 57	93 15 43
16.	Cleveland, Ohio	41 29 51	81 41 50
17.	Atlanta, Georgia	33 45 10	84 23 37
18.	San Diego, California	32 42 53	117 09 21
19.	Denver, Colorado	39 44 58	104 59 22
20.	Seattle-Everett, Washington	47 36 32	122 20 12
21.	Milwaukee, Wisconsin	43 02 19	87 54 15
22.	Tampa, Florida	27 56 58	82 27 25
23.	Cincinnati, Ohio/Kentucky	39 06 07	84 30 35
24.	Kansas City, Missouri/Kansas	39 04 56	94 35 20
25.	Buffalo, New York	42 52 52	78 52 21
26.	Phoenix, Arizona	33 27 12	112 04 28
27.	San Jose, California	37 20 16	121 53 24
28.	Indianapolis, Indiana	39 46 07	86 09 46
29.	New Orleans, Louisiana	29 56 53	90 04 10
30.	Portland, Oregon/Washington	45 31 06	122 40 35
31.	Columbus, Ohio	39 57 47	83 00 17
32.	Hartford, Connecticut	41 46 12	72 40 49
33.	San Antonio, Texas	29 25 37	98 29 06
34.	Rochester, New York	43 09 41	77 36 21
35.	Sacramento, California	38 34 57	121 29 41
36.	Memphis, Tennessee/Arkansas/Mississippi	35 08 46	90 03 13
37.	Louisville, Kentucky/Indiana	38 14 47	85 45 49
38.	Providence-Pawtucket-Warwick, RI/MA	41 49 32	71 24 41
39.	Salt Lake City, Utah	40 45 23	111 53 26
40.	Dayton, Ohio	39 45 32	84 11 43
41.	Birmingham, Alabama	33 31 01	86 48 36
42.	Bridgeport, Connecticut	41 10 49	73 11 22
43.	Norfolk-Portsmouth, Virginia	36 51 10	76 17 21
44.	Albany-Schenectady-Troy, New York	42 39 01	73 45 01
45.	Oklahoma City, Oklahoma	35 28 26	97 31 04
46.	Nashville-Davidson, Tennessee	36 09 33	86 46 55
47.	Toledo, Ohio/Michigan	41 39 14	83 32 39
48.	New Haven, Connecticut	41 18 25	72 55 30

49.	Honolulu, Hawaii	21 19 00	157 52 00
50.	Jacksonville, Florida	30 19 44	81 39 42
51.	Akron, Ohio	41 05 00	81 30 44
52.	Syracuse, New York	43 03 04	76 09 14
53.	Worcester, Massachusetts	42 15 37	71 48 17
54.	Tulsa, Oklahoma	36 09 12	95 59 34
55.	Allentown-Bethlehem-Easton, PA/NJ	40 36 11	75 28 06
56.	Richmond, Virginia	37 32 15	77 26 09
57.	Orlando, Florida	28 32 42	81 22 38
58.	Charlotte, North Carolina	35 13 44	80 50 45
59.	Springfield-Chicopee-Holyoke, MA/CT	42 06 21	72 35 32
60.	Grand Rapids, Michigan	42 58 03	85 40 13
61.	Omaha, Nebraska/Iowa	41 15 42	95 56 14
62.	Youngstown-Warren, Ohio	41 05 57	80 39 02
63.	Greenville, South Carolina	34 50 50	82 24 01
64.	Flint, Michigan	43 00 50	83 41 33
65.	Wilmington, Delaware/New Jersey/Maryland	39 44 46	75 32 51
66.	Raleigh-Durham/North Carolina	35 46 38	78 38 21
67.	West Palm Beach, Florida	26 42 36	80 03 07
68.	Oxnard-Simi Valley-Ventura, California	34 12 00	119 11 00
69.	Fresno, California	36 44 12	119 47 11
70.	Austin, Texas	30 16 09	97 44 37
71.	Tucson, Arizona	32 13 15	110 58 08
72.	Lansing, Michigan	42 44 01	84 33 15
73.	Knoxville, Tennessee	35 57 39	83 55 07
74.	Baton Rouge, Louisiana	30 26 58	91 11 00
75.	El Paso, Texas	31 45 36	106 29 11
76.	Tacoma, Washington	47 14 59	122 26 15
77.	Mobile, Alabama	30 41 36	88 02 33
78.	Harrisburg, Pennsylvania	40 15 43	76 52 59
79.	Albuquerque, New Mexico	35 05 01	106 39 05
80.	Canton, Ohio	40 47 50	81 22 37
81.	Chattanooga, Tennessee/Georgia	35 02 41	85 18 32
82.	Wichita, Kansas	37 41 30	97 20 16
83.	Charleston, South Carolina	32 46 35	79 55 53
84.	San Juan, Puerto Rico	18 28 00	66 07 00
85.	Little Rock-North Little Rock, Arkansas	34 44 42	92 16 37
86.	Las Vegas, Nevada	36 10 20	115 08 37
87.	Columbia, South Carolina	34 00 02	81 02 00
88.	Fort Wayne, Indiana	41 04 21	85 08 26
89.	Bakersfield, California	35 22 31	119 01 16
90.	Davenport-Rock Island-Moline, IA/IL	41 31 00	90 35 00
91.	Shreveport, Louisiana	32 30 46	93 44 58
92.	Des Moines, Iowa	41 35 14	93 37 00
93.	Peoria, Illinois	40 41 42	89 35 33
94.	Newport News-Hampton, Virginia	36 59 30	76 26 00
95.	Jackson, Mississippi	32 17 56	90 11 06
96.	Augusta, Georgia/South Carolina	33 28 20	81 58 00
97.	Spokane, Washington	47 39 32	117 25 33
98.	Corpus Christi, Texas	27 47 51	97 23 45
99.	Madison, Wisconsin	43 04 23	89 22 55
100.	Colorado Springs, Colorado	38 50 07	104 49 16

NOTE: The geographic coordinates given are from the Department of Commerce publication of 1947: "Air-line Distances Between Cities in the United States"

and from data supplied by the National Geodetic Survey. The coordinates are determined by using the first city mentioned as the center of the urban area.

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Part 94 - Private operational-fixed microwave service

16. The authority citation for Part 94 continues to read:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

17. § 94.65 is amended by revising the second sentence in paragraph (a)(1)(i) and revising paragraph (a)(1)(ii) to read as follows:

§ 94.65 Frequencies.

* * * * *

(a)(1) ***

(i) *** Except as noted, however, the frequencies may be used by eligibles in the Power Pool only if the frequencies in § 94.65(a)(1)(ii) of this section are exhausted in the particular geographic area. ***

* * * * *

(ii) Power Pool. Frequencies listed in this paragraph are available to entities primarily engaged in any of the following activities:

(A) The generation, transmission, or distribution of electrical energy for use by the general public or by the members of a cooperative organization.

(B) The distribution of manufactured or natural gas by means of pipe line, for use by the general public or by the members of a cooperative organization, or, in a combination of that activity with the production, transmission or storage of manufactured or natural gas preparatory to such distribution.

(C) The distribution of steam by means of pipeline or, of water by means of pipeline, canal, or open ditch, for use by the general public or by the members of a cooperative organization, or in a combination of that activity with the collection, transmission, storage, or purification of water or the generation of steam preparatory to such distribution.

(D) The providing of a supporting service by a corporation directly related to activities of its parent corporation, of another subsidiary of the same parent, or of its own subsidiary, where the party served is regularly engaged in any of the eligibility activities set forth in this section.

The frequencies are also available for use by General Access Pool users and Part 22 Public Mobile Service users (§ 22.621 of this chapter) provided frequencies listed in their respective pools are exhausted in the particular geographic area. Applications for use of these frequencies under Part 22 of this chapter shall be subject to Part 94 requirements.

* * * * *

APPENDIX E

Rules Cross-reference Table

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90.17(c)(5)	88.639
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90.17(c)(25)	88.1273
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90.17(d)(4)	88.1401(c)(2)
90.17(e)	88.243
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90.17(e)(4)	88.1113(m)
90.19(a)	88.13
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90.19(f)(7)	88.1145
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90.21(d)(4)	88.1401(c)(2)
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90.21(e)(4)	88.1113(m)
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90.23(b)	88.613
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90.23(c)(2)	88.647
90.23(c)(4)	88.639
90.23(c)(14)	88.643
90.23(d)(1), (3), (4)	(REMOVED)
90.23(d)(2)	88.1401
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90.73(c).	.88.617
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90.81(f)	88.243
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90.87(b)	(REMOVED)
90.89(a)	88.15
90.89(b)	88.617
90.89(c)(1)-(5), (7)-(18), (21), (22)	(REMOVED)
90.89(c)(6)	88.663
90.89(c)(19), (20)	88.1323
90.89(d)(1), (2), (4)	(REMOVED)
90.89(d)(3)	88.1401(c)(2)
90.89(e)	88.243
90.89(e)(1), (2)	(REMOVED)
90.91(a)	88.15
90.91(b)	88.617
90.91(c)(1)-(10), (12)-(20)	(REMOVED)
90.91(c)(6)	88.641
90.91(c)(7)	88.639
90.91(c)(11)	88.725
90.91(d)(1)-(4), (6)	(REMOVED)
90.91(d)(5)	88.1401(c)(2)
90.91(e)	88.243

CURRENT RULE	PROPOSED RULE
90.91(e)(1), (2)	(REMOVED)
90.93(a)	88.15
90.93(b)	88.617
90.93(c)	(REMOVED)
90.93(d)	88.243
90.93(d)(1), (2)	(REMOVED)
90.93(d)(3)	88.1401(c)
90.93(e)	(REMOVED)
90.95(a)	88.15
90.95(b)	(REMOVED)
90.95(c)	88.617
90.95(d)(1)-(7), (9)-(19)	(REMOVED)
90.95(d)(8)	88.683
90.95(e)	88.243
90.95(e)(1), (2)	(REMOVED)
90.95(e)(3)	88.1401(c)(2)
90.95(f)	(REMOVED)
90.101	88.1107
90.103(a)	88.1111
90.103(b)	88.1109(b)
90.103(c)(1), (2), (4), (8)-(9), (11), (12), (16)-(19)	88.1109(b)
90.103(c)(3), (7), (28)-(30)	(REMOVED)
90.103(c)(5)	88.1115(a)
90.103(c)(6)	88.1113(c)
90.103(c)(10)	88.1113(d)
90.103(c)(13)	88.1115(c)
90.103(c)(19)(emission)	88.1113(b)
90.103(c)(20)(emission)	88.1113(e)
88.103(c)(20)(power)	88.1115(d)
90.103(c)(21)(secondary)	88.1109(b)
90.103(c)(21)(spread spect)	88.1113(f), 88.1115(b)
90.103(c)(22)	88.1113(h)
90.103(c)(23), (24)	88.1113(a)
90.103(c)(25)	88.1115(a)
90.103(c)(26)	88.1113(j)
90.103(c)(27)	88.1113(g)
90.103(d)	(REMOVED)
90.103(e)	88.1109(c)
90.111, 90.113	88.55
90.115	88.59
90.117	88.63
90.119	88.67
90.121	88.67(k)
90.123	1.914
90.125	1.913
90.127	88.75
90.129(a), (b), (e), (g)	88.83(a)-(d)
90.129(c), (d), (f), (h)-(k)	88.83(e)
90.131	1.918
90.135	88.87

CURRENT RULE	PROPOSED RULE
90.137	.88.95
90.138	88.955
90.139(a)	1.952(a)
90.139(b), (c)	.1.958
90.141	.1.959
90.143	88.103
90.145	88.111
90.147	88.115
90.149	88.119
90.151	.1.931
90.153	88.123
90.155	88.131
90.157	88.143
90.159(a)	88.147
90.159(b)-(e)	88.151
90.171	.88.51
90.173(a)-(e), (j)	88.171
90.173(f)	(REMOVED)
90.173(g)	.88.1253
90.173(h)	88.1063(c)
90.173(i)	88.231
90.173(k)	88.229
90.175	88.305
90.176	88.309
90.177(a)-(e)	88.317
90.177(f)	.88.1113(f)(3)
90.179	88.321
90.185	(REMOVED)
90.201	88.401
90.203	88.405
90.205	88.429
90.207	88.409
90.209 (bandwidth)	88.413
90.209 (emission masks)	88.421
90.211	88.417
90.212	(REMOVED)
90.213	88.425
90.215	(REMOVED)
90.217	(REMOVED)
90.231	88.901
90.233	(REMOVED)
90.235(a)-(d), (f)-(k)	.88.1179
90.235(e)	.88.1559
90.237	(REMOVED)
90.238	.88.1293
90.239	.88.1125
90.241	.88.1263
90.242(a)	.88.1091
90.242(a)(1)	.88.1093
90.242(a)(2)	.88.1095
90.242(a)(3)-(7)	.88.1095
90.242(b)	.88.1097
90.243	88.473

CURRENT RULE	PROPOSED RULE
90.245	.88.477
90.247	.88.481
90.249	.88.485
90.250	88.1323
90.251	.88.901
90.253	(REMOVED)
90.255	(REMOVED)
90.257(a)	88.1189
90.257(b)	88.907(d)
90.257(b)(1)	.88.911(d)(1)
90.257(b)(2)(power)	88.909(b)
90.257(b)(2)(antenna)	.88.911(d)(2)
90.257(c)	(REMOVED)
90.259	88.1303
90.261	88.1203
90.263	(REMOVED)
90.264	88.1273
90.265(a)	88.1333
90.265(b)	.88.931
90.266	88.1283
90.267(a)(1), (6)(Except IS)	88.909(e)
90.267(a)(2) (Except IS)	88.907(a)
90.267(a)(2) (IS)	.88.679
90.267(a)(3)-(5)	(REMOVED)
90.267(b) (Except IS)	.88.907(b), (d)
90.267(b) (IS)	.88.617
90.269	.88.717
90.271	(REMOVED)
90.273	.88.773
90.273(a)	.88.775
90.273(b)	(REMOVED)
90.273(c)	88.777(c)
90.273(d)	88.777(d)
90.275	(REMOVED)
90.277	.88.309
90.279	88.429(g)
90.281	88.1179
90.301	.88.781
90.303	.88.783
90.305	.88.787
90.307	.88.429(j)(1)
90.309	.88.429(j)(2)
90.311(frequencies)	(REMOVED)
90.311(services)	.88.785
90.313	.88.293
90.315	.88.791
90.401	(REMOVED)
90.403	.88.437
90.405	(REMOVED)
90.407	.88.453
90.411	.88.457
90.415	.88.449
90.417	.88.461

CURRENT RULE	PROPOSED RULE
90.419	(REMOVED)
90.421	88.465
90.423	88.469
90.425	88.489
90.427(a)	(REMOVED)
90.427(b)	88.437(a)
90.429-90.476	(REMOVED)
90.477(a)(2)	88.321(c)
90.477 (except (a)(2))	(REMOVED)
90.483	(REMOVED)
90.490	(REMOVED)
90.492	88.1063(d)
90.494(a) (Pool 1)	88.1063(b)
90.494(a) (Pool 2)	88.1063(a)
90.494(b), (c), (e)	(REMOVED)
90.494(d)	88.1065
90.494(f)	88.429(1)
90.494(g)	88.1069
90.501	(REMOVED)
90.503	(REMOVED)
90.505	88.1401(a)
90.507	88.1401(b)
90.509	88.1401(c)
90.511	88.1401(d)
90.513	88.1401(e)
90.515	88.1401(f)
90.517	88.1401(g)
90.555	88.1501
90.601	(REMOVED)
90.603(a), (b)	(REMOVED)
90.603(c)	88.17
90.605	(REMOVED)
90.607(a), (d), (e)	(REMOVED)
90.607(b), (c)	88.83(d)
90.609(a)	1.918(f)
90.609(b)	(REMOVED)
90.609(c)	88.127
90.609(d)	88.737
90.611(a)-(c)	(REMOVED)
90.611(d)	88.107
90.611(e)	88.103(b)
90.611(f)	88.103(d)
90.613(exc. Pub Safety Plan)	88.605
90.613(Pub Safety Plan)	88.833
90.615(a)	88.625
90.615(b)	88.737
90.617(a) (Frequencies)	88.613
90.617(a)-(d) (Freq. Groups)	88.235
90.617(a)(1)	88.831
90.617(b) (Frequencies)	88.617
90.617(c) (Frequencies)	88.625
90.617(d) (Frequencies)	88.621
90.619(a)	88.801

CURRENT RULE	PROPOSED RULE
90.619(a)(1)	88.235
90.619(a)(2)-(5)	88.837
90.619(b)	(REMOVED)
90.619(b)(1)	88.811(a)
90.619(b)(2)	88.817
90.619(b)(3)	88.813(a)
90.619(b)(4)	88.815
90.619(b)(5)	88.813(a)
90.619(b)(6)	88.819
90.619(b)(7)(i)	88.813(a)
90.619(b)(7)(ii)	88.235(b)(4)
90.619(b)(7)(iii)	(REMOVED)
90.619(b)(8)	88.813(c)
90.619(b)(9)	88.813(d)
90.619(b)(10)	88.813(e)
90.619(b)(11)	88.813(f)
90.619(c)	88.841
90.619(d)	(REMOVED)
90.619(d)(1)(Regions)	88.811(b)
90.619(d)(1)(other)	88.813(b)-(f)
90.619(d)(2)	88.817
90.619(d)(3)	88.825
90.619(d)(4)	88.821
90.619(d)(5)	88.823
90.619(d)(6)	88.827
90.621(a)	88.83(d)
90.621(b)	88.215
90.621(c)-(d)	88.219
90.621(e)	88.223
90.621(f)	(REMOVED)
90.621(g)	88.313
90.621(h)	88.313(a)
90.621(i)	88.831
90.621(j)	88.313(h)
90.623(a)	88.247(c)
90.623(b)-(c)	88.247(d)
90.623(d)	88.247(e)
90.625(a), (b)	(REMOVED)
90.625(c)	(REMOVED)
90.627	88.251(a)-(b)
90.629	88.135
90.631(a)	88.271
90.631(b)	88.285
90.631(c)	88.251(c)
90.631(d)	88.287
90.631(e), (f)	88.131(b)
90.631(g), (h)	88.255
90.633(a), (b), (e)	88.289
90.633(c), (d)	88.131(a)
90.633(f), (g)	88.255
90.635	88.429(k)
90.637(a), (c)	88.1179
90.637(b)	88.1175

CURRENT RULE	PROPOSED RULE
90.645(a)-(c)	(REMOVED)
90.645(d)	88.409
90.645(e)	88.1063(d)
90.645(f)-(h)	88.433
90.645(i)	88.1063
90.647(a)	(REMOVED)
90.647(b)	88.489(c)
90.651	(REMOVED)
90.653	88.239
90.656	88.321
90.657	88.147
90.658	88.91(a)-(d)
90.659	88.87(b)(5)
90.701	(REMOVED)
90.703(a), (b)	(REMOVED)
90.703(c)	88.17(c)
90.705	(REMOVED)
90.709(a)(1), (2), (b)	1.918(f)
90.709(a)(3), (c)	88.981(c)
90.709(d)	88.127
90.711	88.103
90.713(a)-(c)	88.979
90.713(d) (Non-Nationwide)	88.259
90.713(d) (Nationwide)	88.979(f)
90.715(a)	88.605
90.715(b)	(REMOVED)
90.717 (def. of Non-comm.)	88.15
90.717 (channels)	88.977
90.719 (full power)	88.671
90.719 (low power)	88.911(e)
90.720	88.1029
90.721	88.675
90.723(a)	88.83(e)
90.723(b)	(REMOVED)
90.723(c)	88.259
90.723(d)	88.227
90.723(e)	88.605
90.723(f)	88.211
90.725 (nationwide)	88.983
90.725 (f)	88.131(a)
90.725 (g) (non-nationwide)	88.139
90.727	88.135
90.729(a), (b)	88.429(f)
90.729(c)	88.909(d)
90.733(a), (b)	(REMOVED)
90.733(c)	88.433
90.733(d)	88.987(b)
90.735	88.489
90.737(a)	88.985
90.737(b)	88.91(g)
90.737(c)	88.91(h)
90.737(d), (e)	88.139
90.739	88.259
90.741	88.1601
(NEW)	88.11
(NEW)	88.15(c)
(NEW)	88.175
(NEW)	88.179
(NEW)	88.183
(NEW)	88.187
(NEW)	88.191
(NEW)	88.195
(NEW)	88.199
(NEW)	88.203
(NEW)	88.207
(NEW)	88.245
(NEW)	88.273
(NEW)	88.277
(NEW)	88.445
(NEW)	88.601
(NEW)	88.609
(NEW)	88.633
(NEW)	88.667
(NEW)	88.673
(NEW)	88.711
(NEW)	88.751
(NEW)	88.813
(NEW)	88.905
(NEW)	88.951
(NEW)	88.975
(NEW)	88.997
(NEW)	88.999
(NEW)	88.1001
(NEW)	88.1003
(NEW)	88.1005
(NEW)	88.1007
(NEW)	88.1009
(NEW)	88.1011
(NEW)	88.1013
(NEW)	88.1015
(NEW)	88.1017
(NEW)	88.1019
(NEW)	88.1059
(NEW)	88.1061
(NEW)	88.1089
(NEW)	88.1171
(NEW)	88.1243
(NEW)	88.1551
(NEW)	88.1563
(NEW)	88.1701

* Pursuant to Notice of Proposed Rule Making, PR Docket No. 91-72, 6 FCC Rcd 2017 (1991).

Appendix F

Proposed New Form

FCC 574X
Approved by OMB
3060-
Expires
See instructions for public burden estimate.

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

FOR FCC USE ONLY

PRIVATE RADIO APPLICATION FOR EXCLUSIVE USE OVERLAY (EUO) AND TEMPORARY LICENSING FREEZE

1. APPLICANT NAME

2. MAILING ADDRESS

3. CITY	4. STATE	5. ZIP CODE	6. CALL SIGN

7. FEE TYPE CODE	8. FEE MULTIPLE	9. FEE DUE	FOR FCC USE ONLY
		$	

10. A. FREQUENCY #1 MHz	B. STATION LOCATION CITY AND STATE	C. EUO PREFERENCE LICENSEE INFORMATION CALL SIGN / LICENSEE NAME
D. STATION LOCATION COORDINATES LATITUDE / LONGITUDE		

11. A. FREQUENCY #2 MHz	B. STATION LOCATION CITY AND STATE	C. EUO PREFERENCE LICENSEE INFORMATION CALL SIGN / LICENSEE NAME
D. STATION LOCATION COORDINATES LATITUDE / LONGITUDE		

12. A. FREQUENCY #3 MHz	B. STATION LOCATION CITY AND STATE	C. EUO PREFERENCE LICENSEE INFORMATION CALL SIGN / LICENSEE NAME
D. STATION LOCATION COORDINATES LATITUDE / LONGITUDE		

13. A. FREQUENCY #4 MHz	B. STATION LOCATION CITY AND STATE	C. EUO PREFERENCE LICENSEE INFORMATION CALL SIGN / LICENSEE NAME
D. STATION LOCATION COORDINATES LATITUDE / LONGITUDE		

☐ Check this box if temporary licensing freeze is requested.

CERTIFICATION

1. Applicant waives all claims for the use of any specific frequency regardless of prior use by license or otherwise.
2. Applicant will have unlimited access to the radio equipment and will control access to exclude unauthorized persons.
3. Neither applicant nor any member thereof is a foreign government or representative thereof.
4. Applicant certifies that all statements made in this application and attachments are true, complete, correct and made in good faith.
5. Applicant certifies that the signature that appears on this application is that of a person with the proper authority to sign on behalf of the party represented, as stated in U.S.C., Title 47, Section 1.913.
6. By checking YES, the applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862, or, in the case of a non-individual applicant (e.g. corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits, that includes FCC benefits, pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. Section 1.2002(b).

☐ YES ☐ NO

7. Applicant certifies the appropriate concurrrences have been obtained pursuant to Rules 88.187 through 88.199.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S.C., TITLE 18, SEC. 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S.C., TITLE 47, SEC. 312(A)(1)), AND/OR FORFEITURE (U.S.C., TITLE 47, SEC. 503).

↳ SIGNATURE DATE

FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID.

FCC 574X 9/92

Instructions for completing FCC Form 574X

General Instructions: The FCC Form 574X is used to apply for an exclusive use overlay (EUO) license and temporary licensing freeze pursuant to Sections 88.179 through 88.207 of the Commission's Rules. All information should be complete, correct and typewritten. The information must be consistent with information presently on file with the Commission if the request is in connection with an existing authorization or if this is a new station request the information must be consistent with that on the accompanying FCC Form 574. See Section 88.191 for the eligibility requirements for an exclusive use overlay license.

Item 1: Enter applicant name. Name should appear exactly as on the associated station license or associated FCC Form 574.

Items 2 through 5: Enter mailing address in items 2 through 5. Mailing address must be the applicants legal address and not that of a third party.

Item 6: Enter call sign of associated station license. If this is a new request leave blank.

Items 7, 8 & 9: See the FCC Private Radio Fee Filing Guide for fee information including Fee Type Code and fee amount required.

Items 10 through 13: The applicant must provide for each frequency and associated base station location the call sign and name of each licensee with an EUO preference located within 80 km. See Rule 88.187 for EUO preference requirements. The information for a maximum of five EUO preference licensees may be entered for each frequency/location. If there are more than six licensees the additional information must be provided on an attachment. A maximum of four frequencies/locations can be applied for on a single 574X. Additional frequencies/locations require additional forms.

If a temporary licensing freeze is requested check the box.

Read all certifications and check the appropriate box in Certification 6.

The FCC Form 574X must bear a signature as required by Rule 1.913.

Mailing Information: See FCC Fee Filing Guide for proper address to submit applications requiring a fee. No fee is required for a governmental entity, a non-profit Special Emergency, or a non-profit Public Safety Radio Service applicant. These non-profit applicants must submit a determination letter from the Internal Revenue Service demonstrating their non-profit status. All fee exempt applications must be submitted to:

Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325-7245

If you need assistance completing this form, you may contact the FCC's Consumer Assistance Branch in Gettysburg, PA at (717) 337-1212.

October 8, 1992

Separate Statement

of

Commissioner Andrew C. Barrett

RE: Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them; Notice of Proposed Rulemaking.

I support this extensive proposal to refarm the spectrum below 800 MHz in the Private Land Mobile area. Given the increasing demand for spectrum by mobile service providers, I believe this type of action serves as an example of how the Commission should strive to manage its spectrum resources more efficiently. I look forward to reviewing the comments in this docket. I am particularly interested in reviewing comments on the question of eligibility for any new spectrum created by this action. I believe that new entrants, with sufficient resources to qualify as FCC licensees, should be given the opportunity to compete for these licenses. I question whether restrictive eligibility criteria, particularly for new, innovative private radio services, will serve the public interest. I hope that commenters will address this aspect of the docket.

*U.S. Government Printing Office: 1992 — 342-145/80007